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SENATE FILE 2056

BY McCOY

Passed Senate, Date _____ Passed House, Date _____

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

Approved _____

A BILL FOR

1 An Act relating to operating a vessel while intoxicated, and
2 providing penalties.

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

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SF 2056 NAT. RES. & ENVIRONMENT

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 VESSEL WHILE INTOXICATED.

18 1. A person commits the offense of operating while
19 intoxicated if the person operates a vessel on the navigable
20 waters of this state in any of the following conditions:

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

23 b. While having an alcohol concentration equal to or in
24 excess of the amount prohibited by section 321J.2, subsection
25 1, paragraph "b".

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 vessel for a period of
9 time not to exceed one year, pursuant to court order.

10 (4) Revocation of the person's driver's license for a
11 period equivalent to the revocation that would be applicable
12 if the operating while intoxicated offense had been a first
13 offense committed in a motor vehicle, pursuant to section
14 321J.4, subsection 1, section 321J.9, or section 321J.12,
15 which includes a minimum revocation period of one hundred
16 eighty days, including a minimum period of ineligibility for a
17 temporary restricted license of thirty days, and may involve a
18 revocation period of one year.

19 (5) Assignment to substance abuse evaluation and
20 treatment, a course for drinking drivers or boaters, and, if
21 available and appropriate, a reality education substance abuse
22 prevention program pursuant to subsection 3.

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

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

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

29 (3) Prohibition of operation of a vessel for a period of
30 time not to exceed one year, pursuant to court order.

31 (4) Revocation of the person's driver's license for a
32 period equivalent to the revocation that would be applicable
33 if the operating while intoxicated offense had been a second
34 offense committed in a motor vehicle, pursuant to section
35 321J.4, subsection 1, section 321J.9, or section 321J.12.

1 c. A class "D" felony for a third offense and each
2 subsequent offense, punishable by all of the following:
3 (1) Imprisonment in the county jail for a determinate
4 sentence of not more than one year but not less than thirty
5 days, or committed to the custody of the director of the
6 department of corrections. A person convicted of a third or
7 subsequent offense may be committed to the custody of the
8 director of the department of corrections, who shall assign
9 the person to a facility pursuant to section 904.513 or the
10 offender may be committed to treatment in the community under
11 the provisions of section 907.13.

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

15 (3) Prohibition of operation of a vessel for a period of
16 time not to exceed two years, pursuant to court order.

17 (4) Revocation of the person's driver's license for a
18 period equivalent to the revocation that would be applicable
19 if the operating while intoxicated offense had been a third
20 offense committed in a motor vehicle, pursuant to section
21 321J.4, subsection 1, section 321J.9, or section 321J.12.

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

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

1 .15 or more.

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

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

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

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

13 b. All persons convicted of an offense under subsection 2
14 shall be ordered, at the person's expense, to undergo, prior
15 to sentencing, a substance abuse evaluation.

16 c. Where a program is available and is appropriate for the
17 convicted person, a person convicted of an offense under
18 subsection 2 shall be ordered to participate in a reality
19 education substance abuse prevention program equivalent to
20 that provided in section 321J.24.

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

35 4. In determining if a violation charged is a second or

1 subsequent offense for purposes of criminal sentencing or
2 license or privilege revocation under this section:

3 a. Any conviction or revocation existing on motor vehicle
4 operating records pursuant to section 321.12 shall be
5 considered as a previous offense, as well as any previous
6 conviction under this section.

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

10 c. Convictions or the equivalent of deferred judgments for
11 violations in any other states under statutes substantially
12 corresponding to this section or section 321J.2 shall be
13 counted as previous offenses. The courts shall judicially
14 notice the statutes of other states which define offenses
15 substantially equivalent to an offense defined in this section
16 or section 321J.2 and can therefore, be considered
17 corresponding statutes. Each previous violation on which
18 conviction or deferral of judgment was entered prior to the
19 date of the violation charged shall be considered and counted
20 as a separate previous offense.

21 5. A person shall not be convicted and sentenced for more
22 than one violation of this section for actions arising out of
23 the same event or occurrence, even if the event or occurrence
24 involves more than one of the conditions specified in
25 subsection 1.

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

31 7. a. This section does not apply to a person operating a
32 vessel while under the influence of a drug if the substance
33 was prescribed for the person and was taken under the
34 prescription and in accordance with the directions of a
35 medical practitioner as defined in chapter 155A or if the

1 substance was dispensed by a pharmacist without a prescription
2 pursuant to the rules of the board of pharmacy examiners, if
3 there is no evidence of the consumption of alcohol and the
4 medical practitioner or pharmacist had not directed the person
5 to refrain from operating a motor vehicle.

6 b. When charged with a violation of subsection 1,
7 paragraph "c", a person may assert, as an affirmative defense,
8 that the controlled substance present in the person's blood or
9 urine was prescribed or dispensed for the person and was taken
10 in accordance with the directions of a practitioner and the
11 labeling directions of the pharmacy, as that person and place
12 of business are defined in section 155A.3.

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

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

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

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

35 9. a. In addition to any fine or penalty imposed under

1 this chapter, the court shall order a defendant convicted of
2 or receiving a deferred judgment for a violation of this
3 section to make restitution for damages resulting directly
4 from the violation, to the victim, pursuant to chapter 910.
5 An amount paid pursuant to this restitution order shall be
6 credited toward any adverse judgment in a subsequent civil
7 proceeding arising from the same occurrence. However, other
8 than establishing a credit, a restitution proceeding pursuant
9 to this section shall not be given evidentiary or preclusive
10 effect in a subsequent civil proceeding arising from the same
11 occurrence.

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

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

32 11. This section does not limit the introduction of any
33 competent evidence bearing on the question of whether a person
34 was under the influence of an alcoholic beverage or a
35 controlled substance or other drug, including the results of

1 chemical tests of specimens of blood, breath, or urine
2 obtained more than two hours after the person was operating a
3 vessel.

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

5 1. A person who operates a vessel on the navigable waters
6 in this state under circumstances which give reasonable
7 grounds to believe that the person has been operating a vessel
8 in violation of section 462A.14 is deemed to have given
9 consent to the withdrawal of specimens of the person's blood,
10 breath, or urine and to a chemical test or tests of the
11 specimens for the purpose of determining the alcohol
12 concentration or presence of drugs, subject to this section.

13 2. a. If a peace officer has reasonable grounds to
14 believe that any of the following has occurred, the peace
15 officer may request that the vessel operator provide a sample
16 of the operator's breath for a preliminary screening test
17 using a device approved by the commissioner of public safety
18 for that purpose:

19 (1) The vessel operator may be violating or has violated
20 section 462A.14.

21 (2) The vessel has been involved in an accident resulting
22 in injury or death.

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

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

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

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

3 b. The vessel has been involved in an accident or
4 collision resulting in personal injury or death.

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

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

10 e. The preliminary breath screening test was administered
11 and it indicated an alcohol concentration of less than the
12 level prohibited under section 321J.2, subsection 1, paragraph
13 "b", and the peace officer has reasonable grounds to believe
14 that the person was under the influence of a drug other than
15 alcohol or a combination of alcohol and another drug.

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

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

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

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

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

1 administered.

2 f. A person who is dead, unconscious, or otherwise in a
3 condition rendering the person incapable of consent or refusal
4 is deemed not to have withdrawn the consent provided by this
5 section, and the test may be given if a licensed physician
6 certifies in advance of the test that the person is dead,
7 unconscious, or otherwise in a condition rendering that person
8 incapable of consent or refusal.

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

11 (1) If the person refuses to submit to the test, the
12 person's vessel operating privileges will be suspended for up
13 to one year.

14 (2) If the person submits to the test and the results
15 indicate an alcohol concentration equal to or in excess of the
16 level prohibited under section 462A.14, the person's vessel
17 operating privileges will be suspended for up to one year.

18 5. Refusal to submit to a test under this section does not
19 prohibit the withdrawal of a specimen for chemical testing if
20 a vessel has been involved in an accident resulting in death
21 or serious bodily injury, if the peace officer has reasonable
22 grounds to believe that the operator of the vessel was
23 violating section 462A.14 at the time of the accident, and the
24 peace officer has obtained, in compliance with chapter 808 or
25 according to the procedure in section 321J.10, subsection 3, a
26 search warrant permitting the withdrawal of a specimen for
27 chemical testing. The act of any person knowingly resisting
28 or obstructing the withdrawal of a specimen pursuant to a
29 search warrant issued under this section constitutes a
30 contempt punishable by a fine not exceeding one thousand
31 dollars or imprisonment in a county jail not exceeding one
32 year or by both such fine and imprisonment, and further
33 constitutes a refusal to submit, punishable under this
34 section.

35 6. Only a licensed physician, licensed physician assistant

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

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

25 8. In any prosecution under section 462A.14, evidence of
26 the results of analysis of a specimen of the defendant's
27 blood, breath, or urine is admissible upon proof of a proper
28 foundation. The alcohol concentration established by the
29 results of an analysis of a specimen of the defendant's blood,
30 breath, or urine withdrawn within two hours after the
31 defendant was operating or was otherwise in physical control
32 of a vessel is presumed to be the alcohol concentration at the
33 time of operation or being in physical control of the vessel.
34 If a person refuses to submit to a chemical test, proof of
35 refusal is admissible in any civil or criminal action or

1 proceeding arising out of acts alleged to have been committed
2 while the person was operating a vessel in violation of
3 section 462A.14. This section does not limit the introduction
4 of any competent evidence bearing on the question of whether a
5 person was under the influence of an alcoholic beverage or a
6 drug, including the results of chemical tests of specimens of
7 blood, breath, or urine obtained more than two hours after the
8 person was operating a vessel.

9 Sec. 4. NEW SECTION. 462A.14B REFUSAL TO SUBMIT --
10 REVOCATION.

11 1. If a person refuses to submit to the chemical testing,
12 a test shall not be given, but the department, upon the
13 receipt of the peace officer's certification, subject to
14 penalty for perjury, that the officer had reasonable grounds
15 to believe the person to have been operating a vessel in
16 violation of section 462A.14, that specified conditions
17 existed for chemical testing pursuant to section 462A.14A, and
18 that the person refused to submit to the chemical testing,
19 shall prohibit the person from operating a vessel, and shall
20 order that the department of transportation revoke the
21 person's driver's license and any nonresident operating
22 privilege for the following periods of time:

23 a. One year if the person has no previous revocation under
24 this chapter.

25 b. Two years if the person has had a previous operation
26 prohibition or license revocation under this chapter.

27 2. Temporary restricted licenses shall be granted
28 according to standards equivalent to those applicable for
29 equivalent violations under chapter 321J.

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

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

33 a. If the person refuses to submit to the test, the
34 person's privilege to operate a vessel will be prohibited for
35 an appropriate period of time under this chapter.

1 b. If the person submits to the test and the results
2 indicate the presence of a controlled substance or other drug,
3 or an alcohol concentration equal to or in excess of the level
4 prohibited by section 321J.2, subsection 1, paragraph "b", the
5 following penalties will apply:

6 (1) The person's driver's license or nonresident operating
7 privilege will be revoked by the department for a period
8 equivalent to that applicable if the offense had been for
9 operating a motor vehicle while intoxicated under chapter
10 321J.

11 (2) The person's privilege to operate a vessel will be
12 prohibited for an appropriate period of time under this
13 chapter.

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

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

22 Sec. 6. NEW SECTION. 462A.14D HEARING ON REVOCATION --
23 APPEAL.

24 Hearings on driver's license revocations shall be held
25 according to the procedures equivalent to those in section
26 321J.13 and related rules.

27 Sec. 7. NEW SECTION. 462A.14E JUDICIAL REVIEW.

28 Judicial review of an action of the department may be
29 sought in accordance with the terms of the Iowa administrative
30 procedure Act, chapter 17A. Notwithstanding the terms of that
31 chapter, a petition for judicial review may be filed in the
32 district court in the county where the alleged events occurred
33 or in the county in which the administrative hearing was held.

34 Sec. 8. NEW SECTION. 462A.14F VIOLATIONS OF ORDERS NOT
35 TO OPERATE A VESSEL.

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

5 2. In addition to the jail term and fine, the department,
6 upon receiving the record of the conviction of a person under
7 this section upon a charge of operating a vessel while the
8 person was under order of the court not to operate a vessel,
9 shall extend the period of prohibition of operating a vessel
10 for an additional like period.

11 Sec. 9. NEW SECTION. 462A.14G DEPARTMENT RECORDKEEPING.

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

15 Sec. 10. Section 462A.23, subsection 2, paragraph b, Code
16 1999, is amended by striking the paragraph and inserting in
17 lieu thereof the following:

18 b. Operating a vessel while intoxicated, or manipulating
19 water skis, a surfboard, or a similar device while in an
20 intoxicated condition or under the influence of a narcotic
21 drug.

22 Sec. 11. Section 907.3, subsection 1, Code Supplement
23 1999, is amended by adding the following new paragraph:

24 NEW PARAGRAPH. 1. The offense is a violation of section
25 462A.14A, and a mandatory minimum sentence must be served by
26 the defendant, either for a primary offense or as a result of
27 a specified punishment for contempt under that section.

28 Sec. 12. Section 907.3, subsection 2, Code Supplement
29 1999, is amended by adding the following new paragraph:

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

35 Sec. 13. Section 907.3, subsection 3, Code Supplement

1 1999, is amended by adding the following new paragraph:

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

5 Sec. 14. Section 915.80, subsection 2, Code 1999, is
6 amended to read as follows:

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

21 Sec. 15. IMPLEMENTATION OF ACT. Section 25B.2, subsection
22 3, shall not apply to this Act.

23 EXPLANATION

24 This bill amends certain sections of Code chapter 462A to
25 prohibit the operation of a vessel while intoxicated (OVWI).
26 The new provisions substantially mirror the procedures and
27 criminal penalties for operating a motor vehicle while
28 intoxicated (OWI) under Code chapter 321J, including
29 revocation of the person's motor vehicle license for an
30 equivalent period of time.

31 The bill adds definitions to chapter 462A, such as are
32 contained in chapter 321J, for "alcohol concentration",
33 "alcoholic beverage", "chemical test", "controlled substance",
34 "peace officer", and "serious injury".

35 The bill adds the offense of operating a vessel while

1 intoxicated. A first offense is a serious misdemeanor,
2 punishable by 48 hours' imprisonment in the county jail, a
3 \$1,000 fine (\$500 of which may be waived if no personal or
4 property injury results), prohibition of operation of a vessel
5 for up to one year, revocation of the person's driver's
6 license for a period equivalent to the revocation period that
7 would be applicable if the offense had been committed while
8 operating a motor vehicle, and assignment to substance abuse
9 evaluation and treatment.

10 A second offense is an aggravated misdemeanor, punishable
11 by not less than seven days in the county jail or community-
12 based correctional facility, a fine of between \$1,500 and
13 \$5,000, prohibition of operation of a vessel for up to one
14 year, revocation of the person's driver's license for a period
15 equivalent to the revocation period that would be applicable
16 if the offense had been committed while operating a motor
17 vehicle, and assignment to substance abuse evaluation and
18 treatment.

19 A third or subsequent offense is a class "D" felony,
20 punishable by between 30 days and one year imprisonment, a
21 fine of between \$2,500 and \$7,500, prohibition of operation of
22 a vessel for up to two years, revocation of the person's
23 driver's license for a period equivalent to the revocation
24 period that would be applicable if the offense had been
25 committed while operating a motor vehicle, and assignment to
26 substance abuse evaluation and treatment.

27 Restrictions on deferred judgement and sentencing and
28 suspended sentences are imposed for specified circumstances.
29 Defendants are also responsible for restitution, including the
30 costs of emergency response.

31 The bill addresses standards and procedures for implied
32 consent to test, comparable to Code sections 321J.5 and 321J.6
33 for OWI violations. The section also includes testing
34 procedures comparable to Code section 321J.11, and a procedure
35 for obtaining test samples pursuant to warrant, based on the

1 procedures outlined in Code section 321J.10.

2 The bill addresses the penalties for refusing to submit to
3 testing. A person can be ordered not to operate a vessel, and
4 may also have a person's driver's license revoked for up to
5 two years, depending on the previous number of prohibitions or
6 revocations under the chapter.

7 The bill addresses the content of the statement of the
8 officer to the person suspected of OVWI, comparable to Code
9 section 321J.8.

10 The bill provides for hearings on driver's license
11 revocations.

12 The bill addresses judicial review procedures.

13 The bill provides a penalty for persons who violate court
14 orders not to operate a vessel.

15 The bill addresses recordkeeping of OVWI violations by the
16 department.

17 Other technical changes are made to other parts of the
18 Code, to conform to the changes made by this bill.

19 This bill may include a state mandate as defined in Code
20 section 25B.3. This bill makes inapplicable Code section
21 25B.2, subsection 3, which would relieve a political
22 subdivision from complying with a state mandate if funding for
23 the cost of the state mandate is not provided or specified.
24 Therefore, political subdivisions are required to comply with
25 any state mandate included in this bill.

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