

Senate Study Bill 3040 - Introduced

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
NATURAL RESOURCES BILL)

A BILL FOR

1 An Act relating to matters under the purview of the department
2 of natural resources, including administration, dams
3 and spillways, personal flotation devices, and operating
4 a motorboat or sailboat while intoxicated, providing
5 penalties, and making penalties applicable.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

MISCELLANEOUS ADMINISTRATIVE CHANGES

1
2
3 Section 1. Section 455A.11, Code 2022, is amended to read
4 as follows:

5 **455A.11 Preferences in temporary employment.**

6 In its employment of persons in temporary positions in
7 conservation and outdoor recreation, the department ~~of natural~~
8 ~~resources~~ shall give preference to persons ~~meeting eligibility~~
9 ~~requirements for the green thumb program and to persons~~
10 working toward an advanced education in natural resources and
11 conservation.

12 Sec. 2. Section 455A.14, subsections 1 and 2, Code 2022, are
13 amended to read as follows:

14 1. Notwithstanding any provision of law to the contrary,
15 the department is authorized to establish fees for camping and
16 use of rental facilities and other special privileges at state
17 parcs, forests, and recreation areas under the jurisdiction of
18 the department.

19 2. The fees established by the department pursuant to
20 this section shall be in such amounts as may be determined
21 by the department to be reasonably competitive with fees
22 established in other public parcs, forests, or recreation areas
23 that provide the same or similar privileges and are located
24 within sixty miles of the perimeter of the state park, forest,
25 or recreation area for which the department is establishing
26 fees. Such fees may be increased, reduced, or waived by
27 the department on a statewide basis or on the basis of an
28 individual state park, forest, or recreation area for special
29 promotional events or efforts or on the basis of special
30 seasonal or holiday rates.

31 Sec. 3. Section 462A.12A, Code 2022, is amended to read as
32 follows:

33 **462A.12A Online watercraft education courses.**

34 1. The department shall develop requirements and standards
35 for online watercraft education courses. Only vendors who have

1 entered into a ~~memorandum of understanding~~ written agreement
2 with the department shall be approved by the department
3 to offer an online watercraft education course that upon
4 successful completion is sufficient to result in the issuance
5 of a watercraft education certificate to the person who
6 completes the course.

7 2. A vendor approved to offer an online watercraft
8 education course as provided in [subsection 1](#) may charge
9 a fee for the course as agreed to in the ~~memorandum of~~
10 ~~understanding~~ agreement with the department and may also
11 collect the watercraft education certificate fee on behalf of
12 the department as agreed to in the ~~memorandum of understanding~~
13 agreement.

14 DIVISION II

15 DAMS AND SPILLWAYS — REPEAL

16 Sec. 4. Section 455A.4, subsection 1, paragraph b, Code
17 2022, is amended to read as follows:

18 *b.* Provide overall supervision, direction, and coordination
19 of functions to be administered by the administrators under
20 chapters 321G, [321I](#), [455B](#), [455C](#), [456A](#), [456B](#), [457A](#), [458A](#), [459](#),
21 [459A](#), [459B](#), [461A](#), [462A](#), [462B](#), ~~[464A](#)~~, [465C](#), [473](#), [481A](#), [481B](#),
22 [483A](#), [484A](#), and [484B](#).

23 Sec. 5. Section 455A.5, subsection 6, paragraphs a, b, and
24 d, Code 2022, are amended to read as follows:

25 *a.* Establish policy and adopt rules, pursuant to chapter
26 17A, necessary to provide for the effective administration of
27 chapter 321G, [321I](#), [456A](#), [456B](#), [457A](#), [461A](#), [462A](#), [462B](#), ~~[464A](#)~~,
28 [465C](#), [481A](#), [481B](#), [483A](#), [484A](#), or [484B](#).

29 *b.* Hear appeals in contested cases pursuant to [chapter 17A](#)
30 on matters relating to actions taken by the director under
31 chapter 321G, [321I](#), [456A](#), [456B](#), [457A](#), [461A](#), [462A](#), [462B](#), ~~[464A](#)~~,
32 [465C](#), [481A](#), [481B](#), [483A](#), [484A](#), or [484B](#).

33 *d.* Approve the budget request prepared by the director for
34 the programs authorized by [chapters 321G](#), [321I](#), [456A](#), [456B](#),
35 [457A](#), [461A](#), [462A](#), [462B](#), ~~[464A](#)~~, [481A](#), [481B](#), [483A](#), [484A](#), and [484B](#).

1 The commission may increase, decrease, or strike any item
2 within the department budget request for the specified programs
3 before granting approval.

4 Sec. 6. Section 455A.6, subsection 6, paragraph b, Code
5 2022, is amended to read as follows:

6 b. Hear appeals in contested cases pursuant to [chapter 17A](#)
7 on matters relating to actions taken by the director under
8 chapter 455C, [458A](#), ~~[464B](#)~~, or [473](#).

9 Sec. 7. Section 456A.24, subsection 12, Code 2022, is
10 amended to read as follows:

11 12. Adopt rules authorizing officers and employees of the
12 department who are peace officers to issue warning citations
13 for violations of [this chapter](#) and [chapters 321G](#), [321I](#), [350](#),
14 [456B](#), [457A](#), [461A](#), [461B](#), [461C](#), [462A](#), [462B](#), ~~[464A](#)~~, [465A](#), [465B](#),
15 [465C](#), [481A](#), [481B](#), [482](#), [483A](#), [484A](#), and [484B](#).

16 Sec. 8. Section 481A.1, unnumbered paragraph 1, Code 2022,
17 is amended to read as follows:

18 Words and phrases as used in [this chapter](#) and [chapters 350](#),
19 [456A](#), [456B](#), [457A](#), [461A](#), [461B](#), [461C](#), [462A](#), [462B](#), ~~[464A](#)~~, [465A](#),
20 [465B](#), [465C](#), [481B](#), [482](#), [483A](#), [484A](#), and [484B](#) and such other
21 chapters as relate to the subject matter of these chapters
22 shall be construed as follows:

23 Sec. 9. Section 602.8102, subsection 26, Code 2022, is
24 amended by striking the subsection.

25 Sec. 10. REPEAL. Sections 464A.1, 464A.1A, 464A.2, 464A.3,
26 464A.4, 464A.5, 464A.6, 464A.7, 464A.8, 464A.9, and 464A.10,
27 Code 2022, are repealed.

28 Sec. 11. REPEAL. Chapter 464B, Code 2022, is repealed.

29 Sec. 12. CODE EDITOR DIRECTIVE.

30 1. The Code editor is directed to transfer section 464A.11
31 to section 456A.11.

32 2. The Code editor shall correct internal references in the
33 Code and in any enacted legislation as necessary due to the
34 enactment of this section.

35 DIVISION III

1 15. A person shall not operate a vessel on the waters of
2 this state under the jurisdiction of the commission unless
3 every person on board the vessel who is under thirteen years
4 of age is wearing a ~~type I, II, III, or V~~ personal flotation
5 device, ~~including "float coats" that meet this definition,~~ that
6 is approved as a wearable personal flotation device by the
7 United States coast guard, while the vessel is under way. This
8 subsection does not apply when the person under thirteen years
9 of age is in an enclosed cabin or below deck, or is a passenger
10 on a commercial vessel with a passenger capacity of twenty-five
11 persons or more.

12 Sec. 17. Section 462A.12, Code 2022, is amended by adding
13 the following new subsection:

14 NEW SUBSECTION. 16. A person shall not operate a vessel
15 that is sixteen feet or more in length, except a canoe or
16 kayak, on the waters of this state under the jurisdiction of
17 the commission unless at least one throwable personal flotation
18 device is readily accessible on board the vessel.

19 DIVISION IV

20 BOATING WHILE INTOXICATED

21 Sec. 18. Section 321J.24, subsection 1, paragraph a, Code
22 2022, is amended to read as follows:

23 a. *"Appropriate victim"* means a victim whose condition
24 demonstrates the results of a motor vehicle or boating accident
25 involving intoxicated ~~drivers~~ operators, as applicable to
26 the participant, without being excessively traumatic to the
27 participant, as determined by the tour supervisor.

28 Sec. 19. Section 321J.24, subsection 2, Code 2022, is
29 amended to read as follows:

30 2. A reality education substance abuse prevention program
31 is established in those judicial districts where the chief
32 judge of the judicial district authorizes participation in the
33 program. Upon a conviction or adjudication for a violation
34 of section 321J.2 or 462A.14, or the entry of a deferred
35 judgment concerning a violation of section 321J.2 or 462A.14,

1 the court or juvenile court may order participation in the
2 reality education substance abuse prevention program as a term
3 and condition of probation or disposition in addition to any
4 other term or condition of probation or disposition required or
5 authorized by law. The court or juvenile court shall require
6 the defendant or delinquent child to abstain from consuming any
7 controlled substance, alcoholic liquor, wine, or beer while
8 participating in the program.

9 Sec. 20. Section 321J.24, subsection 5, paragraph a,
10 subparagraph (1), Code 2022, is amended to read as follows:

11 (1) A hospital or other emergency medical care facility
12 which regularly receives appropriate victims of ~~motor vehicle~~
13 ~~accidents~~, to observe treatment of appropriate victims of ~~motor~~
14 ~~vehicle accidents involving intoxicated drivers~~, under the
15 supervision of a registered nurse, physician, paramedic, or
16 emergency medical technician.

17 Sec. 21. Section 462A.14, subsection 2, Code 2022, is
18 amended to read as follows:

19 2. A person who violates subsection 1 commits:

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

22 (1) ~~Imprisonment~~ A minimum period of imprisonment in the
23 county jail ~~for not less than~~ of forty-eight hours, but not
24 to exceed one year, to be served as ordered by the court,
25 less credit for any time the person was confined in a jail or
26 detention facility following arrest, or for any time the person
27 spent in a court-ordered operating-while-intoxicated program
28 that provides law enforcement security. However, the court,
29 in ordering service of the sentence and in its discretion, may
30 accommodate the defendant's work schedule.

31 (2) Assessment of a fine of one thousand two hundred fifty
32 dollars. However, in the discretion of the court, if no
33 personal or property injury has resulted from the defendant's
34 actions, up to ~~five~~ six hundred ~~twenty-five~~ dollars of the
35 fine may be waived. As an alternative to a portion or all of

1 the fine, the court may order the person to perform unpaid
2 community service. However, the court shall not order the
3 person to perform unpaid community service in lieu of a
4 civil penalty assessed pursuant to subparagraph (5) or victim
5 restitution ordered pursuant to subsection 9 or any other
6 applicable law. Surcharges and fees shall also be assessed
7 pursuant to chapter 911.

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

10 (4) Assignment to substance abuse evaluation and treatment,
11 pursuant to subsection 12, and ~~a course for drinking drivers if~~
12 available and appropriate, a reality education substance abuse
13 prevention program pursuant to section 321J.24.

14 (5) (a) With the consent of the defendant, the court may
15 defer judgment pursuant to section 907.3 and may place the
16 defendant on probation upon conditions as it may require. Upon
17 a showing that the defendant is not fulfilling the conditions
18 of probation, the court may revoke probation and impose any
19 sentence authorized by law. Before taking such action, the
20 court shall give the defendant an opportunity to be heard on
21 any matter relevant to the proposed action. Upon violation
22 of the conditions of probation, the court may proceed as
23 provided in chapter 908. Upon fulfillment of the conditions
24 of probation and the payment of fees imposed and not waived by
25 the judicial district department of correctional services under
26 section 905.14, the defendant shall be discharged without entry
27 of judgment.

28 (b) Upon the entry of a deferred judgment, a civil penalty
29 shall be assessed as provided in section 907.14 in an amount
30 not less than the amount of the criminal fine authorized
31 pursuant to subparagraph (2).

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

34 (1) ~~Imprisonment~~ A minimum period of imprisonment in the
35 county jail or community-based correctional facility for not

1 ~~less than~~ of seven days but not to exceed two years.

2 (2) Assessment of a fine of ~~not less than one thousand~~
3 ~~five hundred~~ at least one thousand eight hundred seventy-five
4 ~~dollars nor more than five thousand~~ but not to exceed six
5 thousand two hundred fifty dollars. Surcharges and fees shall
6 be assessed pursuant to chapter 911.

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

9 (4) Assignment to substance abuse evaluation and treatment,
10 pursuant to subsections 12 and 13, and ~~a course for drinking~~
11 ~~drivers if available and appropriate~~, a reality education
12 substance abuse prevention program pursuant to section 321J.24.

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

15 (1) ~~Imprisonment in the county jail for a determinate~~
16 ~~sentence of not more than one year but not less than thirty~~
17 ~~days, or committed to the custody of the director of the~~
18 ~~department of corrections. A person convicted of a third or~~
19 ~~subsequent offense may be committed to the custody of the~~
20 ~~director of the department of corrections, who shall assign~~
21 ~~the person to a facility pursuant to section 904.513 or the~~
22 ~~offender may be committed to treatment in the community under~~
23 ~~the provisions of section 907.13. Commitment to the custody~~
24 ~~of the director of the department of corrections for an~~
25 ~~indeterminate term not to exceed five years, with a mandatory~~
26 ~~minimum term of thirty days.~~

27 (a) If the court does not suspend a person's sentence of
28 commitment to the custody of the director of the department of
29 corrections under this subparagraph (1), the person shall be
30 assigned to a facility pursuant to section 904.513.

31 (b) If the court suspends a person's sentence of commitment
32 to the custody of the director of the department of corrections
33 under this subparagraph (1), the court shall order the person
34 to serve not less than thirty days nor more than one year in the
35 county jail, and the person may be committed to treatment in

1 the community under section 907.6.

2 (2) Assessment of a fine of ~~not less than two thousand five~~
3 ~~hundred at least three thousand one hundred twenty-five~~ dollars
4 ~~nor more than seven thousand five hundred~~ but not to exceed
5 nine thousand three hundred seventy-five dollars. Surcharges
6 and fees shall be assessed pursuant to chapter 911.

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

9 (4) Assignment to substance abuse evaluation and treatment,
10 pursuant to subsections 12 and 13, and ~~a course for drinking~~
11 ~~drivers if available and appropriate~~, a reality education
12 substance abuse prevention program pursuant to section 321J.24.

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

32 ~~e. A class "B" felony for any offense under this section~~
33 ~~resulting in the death of persons other than the defendant, if~~
34 ~~the court determines that the person who committed the offense~~
35 ~~caused the death, and shall be imprisoned for a determinate~~

~~1 sentence of not more than twenty-five years, or committed to
2 the custody of the director of the department of corrections.
3 A person convicted of a felony offense may be committed to
4 the custody of the director of the department of corrections,
5 who shall assign the person to a facility pursuant to section
6 904.513. The court shall also order that the person not
7 operate a motorboat or sailboat for six years. The court shall
8 also assign the defendant to substance abuse evaluation and
9 treatment pursuant to subsections 12 and 13, and a course for
10 drinking drivers.~~

11 Sec. 22. Section 462A.14, subsection 3, Code 2022, is
12 amended by striking the subsection and inserting in lieu
13 thereof the following:

14 3. The court shall not do any of the following for a
15 violation of this section:

16 a. Defer judgment if prohibited under section 907.3,
17 subsection 1.

18 b. Defer the sentence if prohibited under section 907.3,
19 subsection 2.

20 c. Suspend the sentence if prohibited under section 907.3,
21 subsection 3.

22 Sec. 23. Section 462A.14, subsection 4, unnumbered
23 paragraph 1, Code 2022, is amended to read as follows:

24 In determining if a violation charged is a second or
25 subsequent offense for purposes of criminal sentencing or
26 ~~license or privilege revocation~~ prohibition on the operation
27 of a motorboat or sailboat under this section, all of the
28 following apply:

29 Sec. 24. Section 462A.14, subsection 7, Code 2022, is
30 amended to read as follows:

31 7. a. This section does not apply to a person operating
32 a motorboat or sailboat while under the influence of a drug
33 if the person submitted to chemical testing of the person's
34 blood or urine as required under section 462A.14A or under
35 the authority of a valid search warrant, and if the substance

1 was prescribed for the person and was taken under the
2 prescription and in accordance with the directions of a medical
3 practitioner as defined in [chapter 155A](#) or if the substance was
4 dispensed by a pharmacist without a prescription pursuant to
5 the rules of the board of pharmacy, if there is no evidence
6 of the consumption of alcohol and the medical practitioner
7 or pharmacist had not directed the person to refrain from
8 operating a motor vehicle, or motorboat or sailboat.

9 *b.* When charged with a violation of [subsection 1](#), paragraph
10 "c", or in a hearing under section 462A.14B, subsection 2,
11 involving a person whose blood or urine was tested despite
12 the person's refusal to submit, in accordance with section
13 462A.14D, a person may assert, as an affirmative defense, that
14 the controlled substance present in the person's blood or
15 urine was prescribed or dispensed for the person and was taken
16 in accordance with the directions of a practitioner and the
17 labeling directions of the pharmacy, as that person and place
18 of business are defined in [section 155A.3](#).

19 Sec. 25. Section 462A.14, subsection 8, paragraph c, Code
20 2022, is amended by striking the paragraph and inserting in
21 lieu thereof the following:

22 *c.* The department of public safety shall adopt nationally
23 accepted standards for determining detectable levels
24 of controlled substances in the division of criminal
25 investigation's initial laboratory screening test for
26 controlled substances.

27 Sec. 26. Section 462A.14, subsection 12, paragraphs d and e,
28 Code 2022, are amended to read as follows:

29 *d.* The court may prescribe the length of time for the
30 evaluation and treatment or the court may request that
31 the community college or licensed substance abuse program
32 ~~conducting the course for drinking drivers which the defendant~~
33 ~~is ordered to attend or~~ the treatment program to which the
34 defendant is committed immediately report to the court when
35 the defendant has received maximum benefit from the ~~course for~~

1 ~~drinking drivers~~ or treatment program or has recovered from the
2 defendant's addiction, dependency, or tendency to chronically
3 abuse alcohol or drugs.

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

10 Sec. 27. Section 462A.14A, subsection 4, paragraphs b, c, f,
11 and g, Code 2022, are amended to read as follows:

12 b. If the peace officer fails to offer a test within two
13 hours after the preliminary screening test is administered
14 or refused, or the arrest is made, whichever occurs first, a
15 test is not required under this section, and there shall be
16 no ~~suspension~~ prohibition of motorboat or sailboat operation
17 privileges.

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

23 f. A person who is dead, unconscious, or otherwise in a
24 condition rendering the person incapable of consent or refusal
25 is deemed not to have withdrawn the consent provided by this
26 section, and the test may be given if a licensed physician,
27 physician assistant, or advanced registered nurse practitioner
28 certifies in advance of the test that the person is dead,
29 unconscious, or otherwise in a condition rendering that person
30 incapable of consent or refusal. If the certification is oral,
31 a written certification shall be completed by the physician,
32 physician assistant, or advanced registered nurse practitioner
33 within a reasonable time of the test.

34 g. A Except in a case involving a person described in
35 paragraph "f" or in a case where the chemical test is sought

1 pursuant to a valid search warrant, a person who has been
2 requested to submit to a chemical test shall be advised by a
3 peace officer ~~of the following:~~ pursuant to section 462A.14C.

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

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

20 Sec. 28. Section 462A.14A, subsection 6, Code 2022, is
21 amended to read as follows:

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

1 ~~this section.~~

2 Sec. 29. Section 462A.14A, subsection 8, Code 2022, is
3 amended to read as follows:

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

25 Sec. 30. Section 462A.14A, Code 2022, is amended by adding
26 the following new subsections:

27 NEW SUBSECTION. 9. If a person refuses to submit to a
28 chemical test, proof of refusal is admissible in any civil or
29 criminal action or proceeding arising out of acts alleged to
30 have been committed while the person was operating a motorboat
31 or sailboat in violation of section 462A.14.

32 NEW SUBSECTION. 10. This section does not limit the
33 introduction of any competent evidence bearing on the question
34 of whether a person was under the influence of an alcoholic
35 beverage or a controlled substance or other drug, including

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

4 Sec. 31. Section 462A.14B, Code 2022, is amended to read as
5 follows:

6 **462A.14B Refusal to submit — penalty.**

7 1. If a person refuses to submit to the chemical testing
8 under section 462A.14A, a test shall not be given unless ~~the~~
9 ~~procedure in a warrant is obtained pursuant to~~ section 462A.14D
10 ~~is invoked or chapter 808~~. However, if the person refuses the
11 test, the person shall may be ~~punishable~~ punished by the court
12 according to this section.

13 2. The court, upon petition of the state in a criminal
14 action or proceeding arising out the acts alleged to have
15 been committed while the person was operating a motorboat or
16 sailboat in violation of section 462A.14, shall order a hearing
17 be scheduled. The court, for cause and upon its own motion or
18 upon application by an indigent person or a public defender,
19 shall appoint the state public defender's designee pursuant
20 to section 13B.4 to represent the person in proceedings under
21 this section. Upon a finding that the officer had reasonable
22 ~~ground~~ grounds to believe the person to have been operating a
23 motorboat or sailboat in violation of section 462A.14, that
24 specified conditions existed for chemical testing pursuant to
25 section 462A.14A, and that the person refused to submit to the
26 chemical testing, the court shall:

27 ~~a. Order~~ order that the person shall not operate a motorboat
28 or sailboat for one year.

29 ~~b. Impose a mandatory civil penalty as follows:~~

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

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

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

1 3. ~~If the person does not pay the civil penalty by the time~~
2 ~~the one-year order not to operate expires, the court shall~~
3 ~~extend the order not to operate a motorboat or sailboat for an~~
4 ~~additional year, and may also impose penalties for contempt.~~
5 In a proceeding regarding a prohibition of operating privileges
6 under this section, evidence of the results of analysis of
7 a specimen of the defendant's blood, breath, or urine is
8 admissible upon proof of a proper foundation. The alcohol
9 concentration established by the results of an analysis of a
10 specimen of the defendant's blood, breath, or urine withdrawn
11 within two hours after the defendant was operating a motorboat
12 or sailboat is presumed to be the alcohol concentration at the
13 time of such operation.

14 4. The court shall not defer judgment or sentencing, or
15 suspend execution of any order ~~or fine~~ applicable under this
16 section. Costs of any proceeding under this section may be
17 assessed to the defendant upon issuance of an order prohibiting
18 operation of a motorboat or sailboat entered pursuant to
19 subsection 2. Such costs shall be considered category "B"
20 restitution as defined in section 910.1 and upon request of the
21 defendant, the court shall determine the defendant's reasonable
22 ability to pay pursuant to section 910.2A and shall enter
23 orders consistent with that determination. Where the court
24 has found, pursuant to subsection 2, that an order prohibiting
25 operation of a motorboat or sailboat is not warranted, costs
26 shall be assessed to the state.

27 5. The penalties imposed by [this section](#) shall apply in
28 addition to any penalties imposed under [section 462A.14](#), except
29 that the ~~one-year~~ period under the order not to operate a
30 motorboat or sailboat under [this section](#) shall be imposed and
31 run concurrently with any period of time a defendant is ordered
32 not to operate a motorboat or sailboat under [section 462A.14](#).

33 Sec. 32. Section 462A.14C, subsection 1, Code 2022, is
34 amended to read as follows:

35 1. A person who has been requested to submit to a chemical

1 test shall be advised by a peace officer of the following:

2 ~~a. A refusal to submit to the test is punishable by a~~
3 ~~mandatory civil penalty of five hundred to two thousand~~
4 ~~dollars, and suspension~~ prohibition of motorboat or sailboat
5 operating privileges for ~~at least a one~~ year. In addition,
6 if the person is also convicted of ~~operating a motorboat or~~
7 ~~sailboat while intoxicated~~ a crime under this chapter, the
8 person shall be subject to additional penalties as specified in
9 this chapter at a criminal sentencing.

10 ~~b. If the person submits to the test and the results~~
11 ~~indicate the presence of a controlled substance or other drug,~~
12 ~~or an alcohol concentration equal to or in excess of the~~
13 ~~level prohibited by~~ section 462A.14 person is convicted of a
14 crime under this chapter, the person's privilege to operate a
15 motorboat or sailboat will be prohibited for at least one year,
16 ~~and up to six years~~ person shall be subject to prohibitions and
17 additional penalties as specified in this chapter at a criminal
18 sentencing.

19 Sec. 33. Section 462A.14D, subsections 1, 2, and 5, Code
20 2022, are amended to read as follows:

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

26 ~~a. An accident has resulted in a death or personal injury~~
27 ~~reasonably likely to cause death.~~

28 ~~b. There are reasonable grounds to believe that one or more~~
29 ~~of the persons whose operation of a motorboat or sailboat may~~
30 ~~have been the proximate cause of the accident was violating~~
31 section 462A.14 at the time of the accident. Search warrants
32 may be issued in full compliance with chapter 808 or search
33 warrants may be issued under this section. A search warrant
34 obtained pursuant to chapter 808 is not invalidated by the
35 nonexistence of a condition set forth in subsection 2.

1 2. Search warrants may be issued under this section in full
2 ~~compliance with chapter 808~~ or search warrants may be issued
3 ~~under subsection 3.~~ the investigation of a suspected violation
4 of section 462A.14 if all of the following grounds exist:

5 a. An accident has resulted in a death or bodily injury
6 reasonably likely to cause death.

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

11 5. The act of any person knowingly resisting or obstructing
12 the withdrawal of a specimen pursuant to a valid search warrant
13 issued under this section 462A.14D or chapter 808 constitutes
14 ~~contempt punishable as provided in that section and further~~
15 ~~constitutes a refusal to submit~~ by a fine not exceeding one
16 thousand dollars or by imprisonment in a county jail not
17 exceeding one year or by both. Also, if the withdrawal of
18 a specimen is so resisted or obstructed, section 462A.14A
19 applies.

20 Sec. 34. NEW SECTION. **462A.14G** **Persons under the age of**
21 **twenty-one.**

22 A person who is under the age of twenty-one shall not operate
23 a motorboat or sailboat while having an alcohol concentration
24 of .02 or more. If a person operates a motorboat or sailboat
25 while having an alcohol concentration in violation of this
26 section and less than .08, the person is guilty of a simple
27 misdemeanor.

28 Sec. 35. NEW SECTION. **462A.14H** **Homicide or serious injury**
29 **by sailboat or motorboat.**

30 1. A person commits a class "B" felony when the person
31 unintentionally causes an accident that results in the death of
32 another while operating a motorboat or sailboat in violation
33 of section 462A.14.

34 2. A person commits a class "D" felony when the person
35 unintentionally causes an accident that results in a serious

1 injury while operating a motorboat or sailboat in violation of
2 section 462A.14.

3 3. Pursuant to section 907.3, the court shall not defer
4 judgment or sentencing, or suspend execution of any part of the
5 sentence applicable to the defendant, for a violation of this
6 section.

7 Sec. 36. Section 811.1, subsections 1 and 2, Code 2022, are
8 amended to read as follows:

9 1. A defendant awaiting judgment of conviction and
10 sentencing following either a plea or verdict of guilty of a
11 class "A" felony; forcible felony as defined in [section 702.11](#);
12 any class "B" felony included in [section ~~462A.14~~ 462A.14H](#) or
13 707.6A; any felony included in section 124.401, subsection
14 1, paragraph "a" or "b"; a second or subsequent offense under
15 section 124.401, subsection 1, paragraph "c"; any felony
16 punishable under [section 902.9, subsection 1, paragraph "a"](#);
17 any public offense committed while detained pursuant to section
18 229A.5; or any public offense committed while subject to an
19 order of commitment pursuant to [chapter 229A](#).

20 2. A defendant appealing a conviction of a class "A" felony;
21 forcible felony as defined in [section 702.11](#); any class "B" or
22 "C" felony included in [section ~~462A.14~~ 462A.14H](#) or [707.6A](#); any
23 felony included in [section 124.401, subsection 1, paragraph](#)
24 ["a" or "b"](#); or a second or subsequent conviction under section
25 124.401, subsection 1, paragraph "c"; any felony punishable
26 under [section 902.9, subsection 1, paragraph "a"](#); any public
27 offense committed while detained pursuant to [section 229A.5](#);
28 or any public offense committed while subject to an order of
29 commitment pursuant to [chapter 229A](#).

30 Sec. 37. Section 904.513, subsection 1, paragraph a, Code
31 2022, is amended to read as follows:

32 a. The department of corrections, in cooperation with the
33 judicial district departments of correctional services, shall
34 establish in each judicial district a continuum of programming
35 for the supervision and treatment of offenders convicted of

1 violating chapter 321J or section 462A.14 who are sentenced to
2 the custody of the director. The continuum shall include a
3 range of sanctioning options that include but are not limited
4 to prisons and residential facilities.

5 Sec. 38. Section 904.513, subsection 1, paragraph b,
6 subparagraph (2), Code 2022, is amended to read as follows:

7 (2) Offenders convicted of violating chapter 321J or
8 section 462A.14, sentenced to the custody of the director,
9 and awaiting placement in a community residential substance
10 abuse treatment program for such offenders shall be placed in
11 an institutional substance abuse program for such offenders
12 within sixty days of admission to the institution or as soon
13 as practical. When placing offenders convicted of violating
14 chapter 321J or section 462A.14 in community residential
15 substance abuse treatment programs for such offenders, the
16 department shall give priority as appropriate to the placement
17 of those offenders currently in institutional substance abuse
18 programs for such offenders. The department shall work with
19 each judicial district to enable such offenders to enter
20 community residential substance abuse treatment programs
21 at a level comparable to their prior institutional program
22 participation.

23 Sec. 39. Section 904.909, Code 2022, is amended to read as
24 follows:

25 **904.909 Work release and OWI violators — reimbursement to**
26 **department for transportation costs.**

27 The department of corrections shall arrange for the return
28 of a work release client, or offender convicted of violating
29 chapter 321J or section 462A.14, who escapes from the facility
30 to which the client is assigned or violates the conditions
31 of supervision. The client or offender shall reimburse the
32 department of corrections for the cost of transportation
33 incurred because of the escape or violation. The amount
34 of reimbursement shall be the actual cost incurred by the
35 department and shall be credited to the support account from

1 which the billing occurred. The director of the department
2 of corrections shall recommend rules pursuant to [chapter 17A](#),
3 subject to approval by the board of corrections pursuant to
4 section 904.105, subsection 7, to implement [this section](#).

5 Sec. 40. Section 907.3, subsection 1, paragraph a,
6 subparagraph (7), Code 2022, is amended to read as follows:

7 (7) The offense is a violation of [section 462A.14](#), and
8 ~~a mandatory minimum sentence must be served or mandatory~~
9 ~~minimum fine must be paid by the defendant.~~ the person has
10 been convicted of a violation of that section or the person is
11 prohibited from operating a vessel under section 462A.14B, and
12 any of the following apply:

13 (a) The defendant's alcohol concentration established by
14 the results of an analysis of a specimen of the defendant's
15 blood, breath, or urine withdrawn in accordance with section
16 462A.14 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 .15
20 or more.

21 (b) The defendant has previously been convicted of a
22 violation of section 462A.14, subsection 1, or a violation of a
23 statute in another state substantially corresponding to section
24 462A.14, subsection 1.

25 (c) The defendant has previously received a deferred
26 judgment or sentence for a violation of section 462A.14,
27 subsection 1, or for a violation of a statute in another state
28 substantially corresponding to section 462A.14, subsection 1.

29 (d) The defendant refused to consent to testing requested in
30 accordance with section 462A.14A.

31 (e) The offense under section 462A.14 results in bodily
32 injury to a person other than the defendant.

33 Sec. 41. Section 907.3, subsection 1, paragraph a, Code
34 2022, is amended by adding the following new subparagraph:

35 NEW SUBPARAGRAPH. (08) The offense is a violation of

1 section 462A.14H.

2 Sec. 42. Section 907.3, subsection 2, paragraph a,
3 subparagraph (3), Code 2022, is amended to read as follows:

4 (3) ~~The offense is a violation of section Section 462A.14,~~
5 ~~and a mandatory minimum sentence must be served or mandatory~~
6 ~~minimum fine must be paid by the defendant. if any of the~~
7 ~~following apply:~~

8 (a) The defendant's alcohol concentration established by
9 the results of an analysis of a specimen of the defendant's
10 blood, breath, or urine withdrawn in accordance with section
11 462A.14 exceeds .15, regardless of whether or not the alcohol
12 concentration indicated by the chemical test minus the
13 established margin of error inherent in the device or method
14 used to conduct the test equals an alcohol concentration of .15
15 or more.

16 (b) The defendant has previously been convicted of a
17 violation of section 462A.14, subsection 1, or a violation of a
18 statute in another state substantially corresponding to section
19 462A.14, subsection 1.

20 (c) The defendant has previously received a deferred
21 judgment or sentence for a violation of section 462A.14,
22 subsection 1, or for a violation of a statute in another state
23 substantially corresponding to section 462A.14, subsection 1.

24 (d) The defendant refused to consent to testing requested in
25 accordance with section 462A.14A.

26 (e) The offense under section 462A.14 results in bodily
27 injury to a person other than the defendant.

28 Sec. 43. Section 907.3, subsection 2, paragraph a, Code
29 2022, is amended by adding the following new subparagraph:

30 NEW SUBPARAGRAPH. (04) Section 462A.14H.

31 Sec. 44. Section 907.3, subsection 3, paragraph f, Code
32 2022, is amended to read as follows:

33 f. A mandatory minimum sentence ~~or fine imposed for a~~
34 violation of ~~section 462A.14.~~ of incarceration imposed pursuant
35 to a violation of section 462A.14, subsection 1, and the

1 court shall not suspend any part of a sentence not involving
2 incarceration beyond the mandatory minimum imposed pursuant to
3 section 462A.14, subsection 2, if any of the following apply:

4 (1) The defendant's alcohol concentration established by
5 the results of an analysis of a specimen of the defendant's
6 blood, breath, or urine withdrawn in accordance with section
7 462A.14 exceeds .15, regardless of whether or not the alcohol
8 concentration indicated by the chemical test minus the
9 established margin of error inherent in the device or method
10 used to conduct the test equals an alcohol concentration of .15
11 or more.

12 (2) The defendant has previously been convicted of a
13 violation of section 462A.14, subsection 1, or a violation of a
14 statute in another state substantially corresponding to section
15 462A.14, subsection 1.

16 (3) The defendant has previously received a deferred
17 judgment or sentence for a violation of section 462A.14,
18 subsection 1, or for a violation of a statute in another state
19 substantially corresponding to section 462A.14, subsection 1.

20 (4) The defendant refused to consent to testing requested in
21 accordance with section 462A.14A.

22 (5) The offense under section 462A.14 results in bodily
23 injury to a person other than the defendant.

24 Sec. 45. Section 907.3, subsection 3, Code 2022, is amended
25 by adding the following new paragraph:

26 NEW PARAGRAPH. *og.* A sentence imposed for a violation of
27 section 462A.14H.

28 Sec. 46. Section 915.80, subsection 2, Code 2022, is amended
29 to read as follows:

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

1 out of the ownership, maintenance, or use of a motor vehicle,
2 motorcycle, motorized bicycle, train, boat, or aircraft except
3 for violations of [section 321.261](#), [321.277](#), [321J.2](#), [462A.7](#),
4 [462A.12](#), [462A.14](#), [462A.14H](#), or [707.6A](#), or when the intention is
5 to cause personal injury or death. A license revocation under
6 section 321J.9 or [321J.12](#) shall be considered by the department
7 as evidence of a violation of [section 321J.2](#) for the purposes
8 of [this subchapter](#). A license suspension or revocation under
9 section [462A.14](#), [462A.14B](#), or [462A.23](#) shall be considered by
10 the department as evidence of a violation of [section 462A.14](#)
11 for the purposes of [this subchapter](#).

12

EXPLANATION

13
14

The inclusion of this explanation does not constitute agreement with
the explanation's substance by the members of the general assembly.

15 This bill relates to matters under the purview of the
16 department of natural resources (DNR).

17 MISCELLANEOUS ADMINISTRATIVE CHANGES. The bill removes
18 persons meeting eligibility requirements for the green thumb
19 program from receiving preference in employment for temporary
20 positions in conservation and outdoor recreation with the DNR.

21 Under current law, the DNR is authorized to establish fees
22 for camping and use of rental facilities and other special
23 privileges at state parks and recreation areas under DNR
24 jurisdiction. The bill expands this authorization to include
25 state forests.

26 The bill requires vendors that offer online watercraft
27 education courses to enter into a written agreement with the
28 DNR rather than a memorandum of understanding.

29 DAMS AND SPILLWAYS — REPEAL. Code chapter 464A authorizes
30 the natural resource commission (NRC) to erect a dam or
31 spillway across a stream or at the outlet of a lake, or to alter
32 or reconstruct an existing dam or spillway, so as to increase
33 or decrease its permanent height, or to permanently affect the
34 water level above the structure. The Code chapter governs the
35 use of an expert plan, the process for setting a hearing and

1 filing claims for damages, the factors to be considered prior
2 to adopting a dam or spillway plan, the process for appraising
3 damages, the process for judicial review, and the process
4 to adopt a tentative plan as final. The bill repeals these
5 provisions.

6 The bill transfers the remaining provision of Code chapter
7 464A, Code section 464A.11, which requires the DNR to establish
8 a water trails and low head dam public hazard program, to Code
9 section 456A.11.

10 Code chapter 464B regulates dams and provides for the
11 protection of banks along any part of a stream or raceway,
12 provides that an owner or occupier of a mill or machinery may
13 recover damages caused by a person who injures, destroys,
14 or removes an embankment or other works, and provides that
15 a person owning and using water power for the purpose of
16 propelling machinery has the right to acquire, maintain, and
17 utilize the fall below such power for the purpose of making
18 improvements. The bill repeals Code chapter 464B.

19 PERSONAL FLOTATION DEVICES. Under current law, every
20 watercraft vessel is required to carry at least one life
21 preserver, life belt, ring buoy, or other device for each
22 passenger, so placed as to be readily accessible. A violation
23 of this provision is punishable by a scheduled fine of \$30.
24 The bill reclassifies such devices as wearable personal
25 flotation devices. A personal flotation device marked as
26 type I, type II, type III, or type V with type I, II, or
27 III performance, is considered wearable. The bill makes
28 corresponding changes to references to life preservers and
29 personal flotation devices in Code chapter 462A.

30 The bill requires a person who operates a vessel 16 feet or
31 more in length, except a canoe or kayak, on the waters of this
32 state under the jurisdiction of the NRC to carry at least one
33 throwable personal flotation device that is readily accessible
34 on board the vessel. A personal flotation device marked as
35 type IV or type V, with type IV performance, is considered

1 throwable. A violation of this provision is punishable by a
2 scheduled fine of \$35.

3 BOATING WHILE INTOXICATED. The bill amends the laws
4 relating to operating a motorboat or sailboat while intoxicated
5 (BWI) under Code sections 462A.14 through 462A.14F to generally
6 mirror the laws relating to operating a motor vehicle while
7 intoxicated (OWI) under Code chapter 321J, with certain
8 exceptions.

9 Similar to OWI offenses, the bill allows a court to
10 give credit for time served to a person who is guilty
11 of BWI for any time the person spent in a court-ordered
12 operating-while-intoxicated program that provides law
13 enforcement security. A court may assign a person to
14 substance abuse evaluation and treatment, and if available and
15 appropriate, a reality education substance abuse prevention
16 program pursuant to Code section 321J.24. A court may defer
17 judgment, impose a civil penalty equal to the criminal fine
18 that would otherwise apply, defer a sentence, suspend a
19 sentence, and place a defendant on probation in the same manner
20 as for OWI offenses.

21 Under current law, in both BWI and OWI criminal proceedings
22 involving controlled substances, a person may assert an
23 affirmative defense that the controlled substance present in
24 the person's blood or urine was prescribed or dispensed for
25 the person and was taken in accordance with the directions of
26 a practitioner and the labeling directions of the pharmacy.
27 The bill authorizes the use of the affirmative defense in
28 proceedings related to a person's refusal to submit to a test
29 in BWI cases.

30 The bill amends Code section 462A.14A to mirror the
31 requirements that exist under Code chapter 321J for a licensed
32 physician, a physician assistant, or advanced registered nurse
33 practitioner to certify that the person to be tested is dead,
34 unconscious, or otherwise in a condition rendering that person
35 incapable of consent or refusal. If the certification is oral,

1 a written certification must be completed by the physician,
2 physician assistant, or advanced registered nurse practitioner
3 within a reasonable time of the test.

4 The bill strikes provisions to reduce redundancy regarding
5 the advisement that a law enforcement officer is required to
6 provide to a person suspected of BWI.

7 The bill strikes medical personnel immunity from liability
8 for actions in complying with requests to withdraw blood
9 specimens when they use reasonable care and accepted medical
10 practices.

11 The bill strikes the mandatory civil penalty under current
12 law for refusing to submit to a test. The bill authorizes
13 a court to appoint the state public defender's designee to
14 represent an indigent person at a hearing related to a person's
15 refusal to consent to testing and whether the person must
16 be prohibited from operating a motorboat or sailboat. In a
17 proceeding regarding a prohibition of operating privileges due
18 to a refusal, evidence of the results of analysis of a specimen
19 of the defendant's blood, breath, or urine is admissible
20 upon proof of a proper foundation. Costs of a test refusal
21 proceeding may be assessed to the operator upon issuance of
22 an order prohibiting operation of a motorboat or sailboat.
23 Such costs are category "B" restitution and upon request
24 of the defendant, the court must determine the defendant's
25 reasonable ability to pay. Where the court has found that an
26 order prohibiting operation of a motorboat or sailboat is not
27 warranted, costs are assessed to the state.

28 The bill aligns search warrant requirements in Code section
29 462A.14D to Code chapter 321J. The bill punishes the act
30 of knowingly resisting or obstructing the withdrawal of a
31 specimen pursuant to a valid search warrant issued as contempt
32 punishable by a fine not exceeding \$1,000 or by imprisonment
33 not exceeding one year or by both.

34 The bill makes it a simple misdemeanor for persons under
35 the age of 21 who operate a motorboat or sailboat while having

1 an alcohol concentration equal to or greater than .02 and less
2 than .08. A simple misdemeanor is punishable by confinement
3 for no more than 30 days and a fine of at least \$105 but not
4 more than \$855.

5 Under the bill, a person commits a class "B" felony when the
6 person unintentionally causes an accident that results in the
7 death of another while operating a motorboat or sailboat while
8 intoxicated. A class "B" felony is punishable by confinement
9 for no more than 25 years. In addition, a person commits a
10 class "D" felony when the person unintentionally causes an
11 accident that results in a serious injury while operating a
12 motorboat or sailboat while intoxicated. A class "D" felony
13 is punishable by confinement for no more than five years and
14 a fine of at least \$1,025 but not more than \$10,245. Similar
15 to vehicular homicide offenses involving OWI, a court is
16 prohibited from deferring judgment, deferring a sentence, or
17 suspending a sentence for these offenses.

18 The bill generally aligns the periods of imprisonment and
19 fine amounts for BWI offenses to those of OWI offenses. Under
20 current law, a first offense of BWI is a serious misdemeanor
21 and the minimum fine is \$1,000. The bill increases the minimum
22 fine to \$1,250. The court may still waive one-half of the fine
23 at the court's discretion. However, the court cannot order a
24 person to perform unpaid community service in lieu of a civil
25 penalty or victim restitution. Surcharges and fees must also
26 be assessed pursuant to Code chapter 911. Under current law,
27 a second offense of BWI is an aggravated misdemeanor and the
28 fine must be between \$1,500 and \$5,000. The bill increases
29 the applicable fine to between \$1,875 and \$6,250. A third or
30 subsequent offense of BWI is a class "D" felony and the fine
31 must be between \$2,500 and \$7,500. The bill increases the
32 applicable fine to between \$3,125 and \$9,375.