

FIRST REGULAR SESSION

HOUSE BILL NO. 406

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES SCHAD (Sponsor), JONES (117), TILLEY, WALLACE, WILSON (119), MCGHEE, BIVINS, MOORE, DEEKEN, ROBB, FISHER, SCHAAF, DAY, SATER, WETER, CUNNINGHAM (145), PARSON, SUTHERLAND, DUSENBERG, DENISON, FRANZ, WELLS, SCHNEIDER, WILSON (130), MAY, WRIGHT, COOPER (155), MUSCHANY, JONES (89), ONDER, POLLOCK, DETHROW, LOEHNER, RUESTMAN, SCHLOTTACH, KINGERY, LEMBKE, DEMPSEY, COOPER (120), NIEVES, SMITH (14), BAKER (123), NANCE, VIEBROCK, CUNNINGHAM (86), WOOD, ERVIN, MUNZLINGER, GUEST, PRATT, FLOOK, STEVENSON, SMITH (150), BEARDEN, SILVEY, SCHOELLER, NOLTE, DIXON, QUINN (7), ST. ONGE, KELLY, RICHARD, SANDER, SCHARNHORST, FAITH, BRUNS AND GRISAMORE (Co-sponsors).

Read 1st time January 16, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

0998L.01I

AN ACT

To repeal sections 306.111, 306.112, 306.116, 306.117, and 565.082, RSMo, and to enact in lieu thereof six new sections relating to watercraft regulations, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 306.111, 306.112, 306.116, 306.117, and 565.082, RSMo, are
2 repealed and six new sections enacted in lieu thereof, to be known as sections 306.111, 306.112,
3 306.116, 306.117, 306.118, and 565.082, to read as follows:

306.111. 1. A person commits the crime of negligent operation of a vessel if when
2 operating a vessel on the [Mississippi River, Missouri River or the lakes] **waters** of this state
3 [he] **such person** acts with criminal negligence, as defined in subsection 5 of section 562.016,
4 RSMo, to cause physical injury to any other person or damage to the property of any other
5 person. A person convicted of negligent operation of a vessel is guilty of a class B misdemeanor
6 upon conviction for the first violation, guilty of a class A misdemeanor upon conviction for the
7 second violation, and guilty of a class D felony for conviction for the third and subsequent
8 violations.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

9 2. A person commits the crime of operating a vessel while intoxicated if [he] **such**
10 **person** operates a vessel on the [Mississippi River, Missouri River or the lakes] **waters** of this
11 state while in an intoxicated condition. A person convicted of operating a vessel while
12 intoxicated is guilty of a class B misdemeanor upon conviction for the first violation, guilty of
13 a class A misdemeanor upon conviction for the second violation, and guilty of a class D felony
14 for conviction for the third and subsequent violations.

15 3. A person commits the crime of involuntary manslaughter with a vessel if, while in an
16 intoxicated condition, [he] **such person** operates any vessel on the [Mississippi River, Missouri
17 River or the lakes] **waters** of this state and, when so operating, acts with criminal negligence to
18 cause the death of any person. Involuntary manslaughter with a vessel is a class C felony.

19 4. A person commits the crime of assault with a vessel in the second degree if, while in
20 an intoxicated condition, [he] **such person** operates any vessel on the [Mississippi River,
21 Missouri River or the lakes] **waters** of this state and, when so operating, acts with criminal
22 negligence to cause physical injury to any other person. Assault with a vessel in the second
23 degree is a class D felony.

24 5. For purposes of this section, a person is in an intoxicated condition when [he] **such**
25 **person** is under the influence of alcohol, a controlled substance or drug, or any combination
26 thereof.

306.112. 1. A person commits the crime of operating a vessel with excessive blood
2 alcohol content if such person operates a vessel on the [Mississippi River, Missouri River or the
3 lakes] **waters** of this state with [ten-hundredths] **eight-hundredths** of one percent or more by
4 weight of alcohol in such person's blood.

5 2. As used in this section, percent by weight of alcohol in the blood shall be based upon
6 grams of alcohol per one hundred milliliters of blood and may be shown by chemical analysis
7 of the person's blood, breath, urine, or saliva.

8 3. Any person convicted of operating a vessel with excessive blood alcohol content is:

9 (1) Guilty of a class B misdemeanor upon conviction for the first violation[.] ;

10 (2) Guilty of a class A misdemeanor upon conviction for the second violation[.] **within**
11 **ten years of a first offense and such person shall be placed on probation by the court for**
12 **a period of two years; and**

13 (3) Guilty of a class D felony for conviction for the third and subsequent violations
14 **within twenty years of two prior offenses and such person shall be placed on probation by**
15 **the court for a period of three years. In addition to the requirements set forth in section**
16 **306.128, such person shall be prohibited from operating a vessel for a period of five years**
17 **from the date of conviction.**

306.116. 1. Any person who operates a vessel upon the [Mississippi River, Missouri River or the lakes] **waters** of this state shall be deemed to have given consent to, subject to the provisions of sections 306.111 to 306.119, a chemical test or tests of such person's breath, blood, urine, or saliva for the purpose of determining the alcohol or drug content of such person's blood if arrested for any offense arising out of acts which the arresting law enforcement officer had reasonable grounds to believe were committed while the person was operating a vessel upon the [Mississippi River, Missouri River or lakes] **waters** of this state in violation of section 306.111 or 306.112. The test shall be administered at the direction of the arresting law enforcement officer whenever the person has been arrested for the offense.

2. The implied consent to submit to the chemical tests listed in subsection 1 of this section shall be limited to not more than two such tests arising from the same arrest, incident, or charge.

3. The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of such person's choosing and at such person's expense administer a test in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test taken at the direction of a law enforcement officer.

4. Upon the request of the person who is tested, full information concerning the test shall be made available to such person.

306.117. 1. Upon the trial of any person for violation of any of the provisions of section 306.111 or 306.112 the amount of alcohol or drugs in the person's blood at the time of the act alleged as shown by any chemical analysis of the person's blood, breath, urine, or saliva is admissible in evidence and the provisions of subdivision (5) of section 491.060, RSMo, shall not prevent the admissibility or introduction of such evidence if otherwise admissible. Evidence of alcohol in a person's blood shall be given the following effect:

(1) If there was five-hundredths of one percent or less by weight of alcohol in such person's blood, it shall be presumed that the person was not intoxicated at the time the specimen was obtained;

(2) If there was in excess of five-hundredths of one percent but less than [ten-hundredths] **eight-hundredths** of one percent by weight of alcohol in such person's blood, the fact shall not give rise to any presumption that the person was or was not intoxicated, but the fact may be considered with other competent evidence in determining whether the person was intoxicated;

(3) If there was [ten-hundredths] **eight-hundredths** of one percent or more by weight of alcohol in the person's blood, this shall be prima facie evidence that the person was intoxicated at the time the specimen was taken.

18 2. Percent by weight of alcohol in the blood shall be based upon grams of alcohol per
19 one hundred milliliters of blood.

20 3. A chemical analysis of a person's breath, blood, urine, or saliva, in order to give rise
21 to the presumption or to have the effect provided for in subsection 1 of this section, shall have
22 been performed as provided in sections 306.111 to 306.119 and in accordance with methods and
23 standards approved by the department of health and senior services.

24 4. The provisions of this section shall not be construed as limiting the introduction of
25 any other competent evidence bearing upon the question whether the person was intoxicated or
26 under the influence of a controlled substance, or drug, or a combination of either or both with
27 or without alcohol.

**306.118. 1. For purposes of this section, unless the context clearly indicates
2 otherwise:**

3 **(1) An "aggravated offender" is a person who:**

4 **(a) Has pleaded guilty to or has been found guilty of three or more**
5 **intoxication-related boating offenses; or**

6 **(b) Has pleaded guilty to or has been found guilty of one or more**
7 **intoxication-related boating offense and, in addition, any of the following: involuntary**
8 **manslaughter under subsection 3 of section 306.111; assault with a vessel in the second**
9 **degree under subsection 4 of section 306.111; or assault of a law enforcement officer in the**
10 **second degree under subdivision (4) of subsection 1 of section 565.082, RSMo;**

11 **(2) A "chronic offender" is:**

12 **(a) A person who has pleaded guilty to or has been found guilty of four or more**
13 **intoxication-related boating offenses; or**

14 **(b) A person who has pleaded guilty to or has been found guilty of, on two or more**
15 **separate occasions, any combination of the following: involuntary manslaughter under**
16 **subsection 3 of section 306.111; assault with a vessel in the second degree under subsection**
17 **4 of section 306.111; or assault of a law enforcement officer in the second degree under**
18 **subdivision (4) of subsection 1 of section 565.082, RSMo; or**

19 **(c) A person who has pleaded guilty to or has been found guilty of two or more**
20 **intoxication-related boating offenses and, in addition, any of the following: involuntary**
21 **manslaughter under subsection 3 of section 306.111; assault in the second degree under**
22 **subsection 4 of section 306.111; or assault of a law enforcement officer in the second degree**
23 **under subdivision (4) of subsection 1 of section 565.082, RSMo;**

24 **(3) An "intoxication-related boating offense" is operating a vessel while intoxicated,**
25 **operating with excessive blood alcohol content, involuntary manslaughter under subsection**

26 3 of section 306.111, or assault of a law enforcement officer in the second degree under
27 subdivision (4) of subsection 1 of section 565.082, RSMo;

28 (4) A "persistent offender" is one of the following:

29 (a) A person who has pleaded guilty to or has been found guilty of two or more
30 intoxication-related boating offenses;

31 (b) A person who has pleaded guilty to or has been found guilty of involuntary
32 manslaughter under subsection 3 of section 306.111, assault in the second degree under
33 subsection 4 of section 306.111, or assault of a law enforcement officer in the second degree
34 under subdivision (4) of subsection 1 of section 565.082, RSMo; and

35 (5) A "prior offender" is a person who has pleaded guilty to or has been found
36 guilty of one intoxication-related boating offense, where such prior offense occurred within
37 five years of the occurrence of the intoxication-related boating offense for which the person
38 is charged.

39 2. Any person who pleads guilty to or is found guilty of a violation of section
40 306.111 or 306.112 who is alleged and proved to be a prior offender is guilty of a class A
41 misdemeanor.

42 3. Any person who pleads guilty to or is found guilty of a violation of section
43 306.111 or 306.112 who is alleged and proved to be a persistent offender is guilty of a class
44 D felony.

45 4. Any person who pleads guilty to or is found guilty of a violation of section
46 306.111 or 306.112 who is alleged and proved to be an aggravated offender is guilty of a
47 class C felony.

48 5. Any person who pleads guilty to or is found guilty of a violation of section
49 306.111 or 306.112 who is alleged and proved to be a chronic offender is guilty of a class
50 B felony.

51 6. No state, county, or municipal court shall suspend the imposition of sentence as
52 to a prior offender, persistent offender, aggravated offender, or chronic offender under
53 this section nor sentence such person to pay a fine in lieu of a term of imprisonment. No
54 prior offender shall be eligible for parole or probation until he or she has served a
55 minimum of five days imprisonment, unless as a condition of such parole or probation such
56 person performs at least thirty days of community service under the supervision of the
57 court in those jurisdictions which have a recognized program for community service. No
58 persistent offender shall be eligible for parole or probation until he or she has served a
59 minimum of ten days imprisonment, unless as a condition of such parole or probation such
60 person performs at least sixty days of community service under the supervision of the
61 court. No aggravated offender shall be eligible for parole or probation until he or she has

62 served a minimum of sixty days imprisonment. No chronic offender shall be eligible for
63 parole or probation until he or she has served a minimum of two years imprisonment.

64 7. The state, county, or municipal court shall find the defendant to be a prior
65 offender, persistent offender, aggravated offender, or chronic offender if:

66 (1) The indictment or information, original or amended, or the information in lieu
67 of an indictment pleads all essential facts warranting a finding that the defendant is a prior
68 offender or persistent offender; and

69 (2) Evidence is introduced that establishes sufficient facts pleaded to warrant a
70 finding beyond a reasonable doubt the defendant is a prior offender, persistent offender,
71 aggravated offender, or chronic offender; and

72 (3) The court makes findings of fact that warrant a finding beyond a reasonable
73 doubt by the court that the defendant is a prior offender, persistent offender, aggravated
74 offender, or chronic offender.

75 8. In a jury trial, the facts shall be pleaded, established and found prior to
76 submission to the jury outside of its hearing.

77 9. In a trial without a jury or upon a plea of guilty, the court may defer the proof
78 in findings of such facts to a later time, but prior to sentencing.

79 10. The defendant shall be accorded full rights of confrontation and
80 cross-examination, with the opportunity to present evidence, at such hearings.

81 11. The defendant may waive proof of the facts alleged.

82 12. Nothing in this section shall prevent the use of presentence investigations or
83 commitments.

84 13. At the sentencing hearing both the state, county, or municipality and the
85 defendant shall be permitted to present additional information bearing on the issue of
86 sentence.

87 14. The pleas or findings of guilty shall be prior to the date of commission of the
88 present offense.

89 15. The court shall not instruct the jury as to the range of punishment or allow the
90 jury, upon a finding of guilty, to assess and declare the punishment as part of its verdict
91 in cases of prior offenders, persistent offenders, aggravated offenders, or chronic offenders.

565.082. 1. A person commits the crime of assault of a law enforcement officer,
2 emergency personnel, or probation and parole officer in the second degree if such person:

3 (1) Knowingly causes or attempts to cause physical injury to a law enforcement officer,
4 emergency personnel, or probation and parole officer by means of a deadly weapon or dangerous
5 instrument;

6 (2) Knowingly causes or attempts to cause physical injury to a law enforcement officer,
7 emergency personnel, or probation and parole officer by means other than a deadly weapon or
8 dangerous instrument;

9 (3) Recklessly causes serious physical injury to a law enforcement officer, emergency
10 personnel, or probation and parole officer; or

11 (4) While in an intoxicated condition or under the influence of controlled substances or
12 drugs, operates a motor vehicle **or motorboat** in this state and when so operating, acts with
13 criminal negligence to cause physical injury to a law enforcement officer, emergency personnel,
14 or probation and parole officer;

15 (5) Acts with criminal negligence to cause physical injury to a law enforcement officer,
16 emergency personnel, or probation and parole officer by means of a deadly weapon or dangerous
17 instrument;

18 (6) Purposely or recklessly places a law enforcement officer, emergency personnel, or
19 probation and parole officer in apprehension of immediate serious physical injury; or

20 (7) Acts with criminal negligence to create a substantial risk of death or serious physical
21 injury to a law enforcement officer, emergency personnel, or probation and parole officer.

22 2. As used in this section, "emergency personnel" means any paid or volunteer
23 firefighter, emergency room or trauma center personnel, or emergency medical technician as
24 defined in subdivisions (15), (16), and (17) of section 190.100, RSMo.

25 3. Assault of a law enforcement officer, emergency personnel, or probation and parole
26 officer in the second degree is a class B felony unless committed pursuant to subdivision (2), (5),
27 (6), or (7) of subsection 1 of this section in which case it is a class C felony.

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