

HOUSE _____ **AMENDMENT NO.** _____

Offered By

AMEND House Committee Substitute for Senate Committee Substitute for for Senate Bill Nos. 767, 653, 754, 705, 441, 528, 831, 833, & 847, Page 19, Section 301.4043, Line 23, by inserting after all of said section and line the following:

“306.111. 1. A person commits the crime of negligent operation of a vessel if when operating a vessel he or she acts with criminal negligence, as defined in subsection 5 of section 562.016, to cause physical injury to any other person or damage to the property of any other person. A person convicted of negligent operation of a vessel is guilty of a class B misdemeanor upon conviction for the first violation, guilty of a class A misdemeanor upon conviction for the second violation, and guilty of a class D felony for conviction for the third and subsequent violations.

2. A person commits the crime of operating a vessel while intoxicated if he or she operates a vessel on the [Mississippi River, Missouri River or the lakes] waters of this state while in an intoxicated condition. Operating a vessel while intoxicated is a class B misdemeanor.

3. A person commits the crime of involuntary manslaughter with a vessel if, while in an intoxicated condition, he or she operates any vessel and, when so operating, acts with criminal negligence to cause the death of any person. Involuntary manslaughter with a vessel is a class C felony.

4. A person commits the crime of assault with a vessel in the second degree if, while in an intoxicated condition, he or she operates any vessel and, when so operating, acts with criminal negligence to cause physical injury to any other person. Assault with a vessel in the second degree is a class D felony.

5. For purposes of this section, a person is in an intoxicated condition when he or she is under the influence of alcohol, a controlled substance or drug, or any combination thereof.

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

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

4 3. Operating a vessel with excessive blood alcohol content is a class B misdemeanor.

5 306.113. 1. For purposes of sections [306.111] 306.110 to 306.119, the term "operate"
6 means to physically control the movement of a vessel in motion under mechanical or sail power in
7 water.

8 2. No arrest shall be made under sections [306.111] 306.110 to 306.119 unless probable
9 cause exists for that arrest.

10 306.114. 1. No person convicted of or pleading guilty to a violation of section 306.110,
11 306.111 or 306.112 shall be granted a suspended imposition of sentence, unless such person is
12 placed on probation for a minimum of two years and a record of the conviction or plea of guilty is
13 entered into the records of the Missouri uniform law enforcement system maintained by the
14 Missouri state highway patrol.

15 2. Chemical tests of a person's blood, breath, urine, or saliva to be considered valid under
16 the provisions of sections [306.111] 306.110 to 306.119 shall be performed according to methods
17 and devices approved by the department of health and senior services by licensed medical
18 personnel or by a person possessing a valid permit issued by the department of health and senior
19 services for this purpose. In addition, any state, county, or municipal law enforcement officer who
20 is certified pursuant to chapter 590 may, prior to arrest, administer a portable chemical test to any
21 person suspected of operating any vessel in violation of section 306.110, 306.111, or 306.112. A
22 portable chemical test shall be admissible as evidence of probable cause to arrest and as
23 exculpatory evidence, but shall not be admissible as evidence of blood alcohol content. The
24 provisions of section 306.116 shall not apply to a test administered prior to arrest pursuant to this
25 section.

26 3. The department of health and senior services shall approve satisfactory techniques,
27 devices, equipment, or methods to conduct tests required by sections [306.111] 306.110 to
28 306.119, and shall establish standards as to the qualifications and competence of individuals to
29 conduct analyses and to issue permits which shall be subject to termination, suspension or
30 revocation by the department of health and senior services.

31 4. A licensed physician, registered nurse, or trained medical technician, acting at the
32 request and direction of a law enforcement officer, shall withdraw blood for the purpose of
33 determining the alcohol content of the blood, unless the medical personnel, in the exercise of good
34 faith medical judgment, believes such procedure would endanger the life or health of the person in
35 custody. Blood may be withdrawn only by such medical personnel, but such restriction shall not
36 apply to the taking of a breath test or a urine or saliva specimen. In withdrawing blood for the

1 purpose of determining the alcohol content in the blood, only a previously unused and sterile
2 needle and sterile vessel shall be used and the withdrawal shall otherwise be in strict accord with
3 accepted medical practices. Upon the request of the person who is tested, full information
4 concerning the test taken at the direction of the law enforcement officer shall be made available to
5 such person.

6 5. No person who administers any test pursuant to the provisions of sections [306.111]
7 306.110 to 306.119 upon the request of a law enforcement officer, no hospital in or with which
8 such person is employed or is otherwise associated or in which such test is administered, and no
9 other person, firm, or corporation by whom or with which such person is employed or is in any
10 way associated shall be civilly liable for damages to the person tested, except for negligence in
11 administering of the test or for willful and wanton acts or omissions.

12 6. Any person who is dead, unconscious or who is otherwise in a condition rendering such
13 person incapable of refusing to take a test as provided in sections [306.111] 306.110 to 306.119
14 shall be deemed not to have withdrawn the consent provided by section 306.116 and the test or
15 tests may be administered.

16 306.116. 1. Any person who operates a vessel upon the [Mississippi River, Missouri
17 River or the lakes] waters of this state shall be deemed to have given consent to, subject to the
18 provisions of sections [306.111] 306.110 to 306.119, a chemical test or tests of such person's
19 breath, blood, urine, or saliva for the purpose of determining the alcohol or drug content of such
20 person's blood if arrested for any offense arising out of acts which the arresting law enforcement
21 officer had reasonable grounds to believe were committed while the person was operating a vessel
22 upon the [Mississippi River, Missouri River or lakes] waters of this state in violation of section
23 306.110, 306.111₂ or 306.112. The test shall be administered at the direction of the arresting law
24 enforcement officer whenever the person has been arrested for the offense.

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

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

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

34 306.117. 1. Upon the trial of any person for violation of any of the provisions of section
35 306.110, 306.111₂ or 306.112 the amount of alcohol or drugs in the person's blood at the time of
36 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 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 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 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.

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

3. A chemical analysis of a person's breath, blood, urine, or saliva, in order to give rise to the presumption or to have the effect provided for in subsection 1 of this section, shall have been performed as provided in sections [306.111] 306.110 to 306.119 and in accordance with methods and standards approved by the department of health and senior services.

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

306.118. 1. For purposes of this section, unless the context clearly indicates otherwise, the following terms mean:

(1) "Aggravated offender", a person who:

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

(b) Has pleaded guilty to or has been found guilty of one or more intoxication-related boating offenses and any of the following: involuntary manslaughter under subsection 3 of section 306.111; involuntary manslaughter involving a vessel under section 565.024; assault with a vessel in the second degree under subsection 4 of section 306.111, or assault of a law enforcement officer in the second degree under subdivision (4) of subsection 1 of section 565.082;

(2) "Chronic offender":

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

(b) A person who has pleaded guilty to or has been found guilty of, on two or more separate occasions, any combination of the following: involuntary manslaughter under subsection 3 of section 306.111; involuntary manslaughter involving a vessel under section 565.024; assault with a vessel in the second degree under subsection 4 of section 306.111; or assault of a law enforcement officer in the second degree under subdivision (4) of subsection 1 of section 565.082; or

(c) A person who has pleaded guilty to or has been found guilty of two or more intoxication-related boating offenses and any of the following: involuntary manslaughter under subsection 3 of section 306.111; involuntary manslaughter involving a vessel under section 565.024; assault with a vessel in the second degree under subsection 4 of section 306.111; or assault of a law enforcement officer in the second degree under subdivision (4) of subsection 1 of section 565.082;

(3) "Intoxication-related boating offense", operating a vessel while intoxicated under subsection 2 of section 306.111; operating a vessel with excessive blood alcohol content under section 306.112; involuntary manslaughter under subsection 3 of section 306.111; involuntary manslaughter involving a vessel under section 565.024; assault with a vessel in the second degree under subsection 4 of section 306.111; any violation of subsection 2 of section 306.110; or assault of a law enforcement officer in the second degree under subdivision (4) of subsection 1 of section 565.082;

(4) "Persistent offender", one of the following:

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

(b) A person who has pleaded guilty to or has been found guilty of involuntary manslaughter under subsection 3 of section 306.111, involuntary manslaughter involving a vessel under section 565.024, assault in the second degree under subsection 4 of section 306.111, assault of a law enforcement officer in the second degree under subdivision (4) of subsection 1 of section 565.082;

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

2. Any person who pleads guilty to or is found guilty of a violation of subsection 2 of section 306.110, section 306.111, or section 306.112, who is alleged and proved to be a prior offender shall be guilty of a class A misdemeanor.

3. Any person who pleads guilty to or is found guilty of a violation of subsection 2 of section 306.110, section 306.111, or section 306.112, who is alleged and proved to be a persistent offender shall be guilty of a class D felony.

1 4. Any person who pleads guilty to or is found guilty of a violation of subsection 2 of
2 section 306.110, section 306.111, or section 306.112, who is alleged and proved to be an
3 aggravated offender shall be guilty of a class C felony.

4 5. Any person who pleads guilty to or is found guilty of a violation of subsection 2 of
5 section 306.110, section 306.111, or section 306.112 who is alleged and proved to be a chronic
6 offender shall be guilty of a class B felony.

7 6. No state, county, or municipal court shall suspend the imposition of sentence as to a
8 prior offender, persistent offender, aggravated offender, or chronic offender under this section, nor
9 sentence such person to pay a fine in lieu of a term of imprisonment, notwithstanding the
10 provisions of section 557.011 to the contrary notwithstanding. No prior offender shall be eligible
11 for parole or probation until he or she has served a minimum of five days imprisonment, unless as
12 a condition of such parole or probation such person performs at least thirty days of community
13 service under the supervision of the court in those jurisdictions which have a recognized program
14 for community service. No persistent offender shall be eligible for parole or probation until he or
15 she has served a minimum of ten days imprisonment, unless as a condition of such parole or
16 probation such person performs at least sixty days of community service under the supervision of
17 the court. No aggravated offender shall be eligible for parole or probation until he or she has
18 served a minimum of sixty days imprisonment. No chronic offender shall be eligible for parole or
19 probation until he or she has served a minimum of two years imprisonment.

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

22 (1) The indictment or information, original or amended, or the information in lieu of an
23 indictment pleads all essential facts warranting a finding that the defendant is a prior offender,
24 persistent offender, aggravated offender, or chronic offender; and

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

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

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

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

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

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1 11. The defendant may waive proof of the facts alleged.
2 12. Nothing in this section shall prevent the use of presentence investigations or
3 commitments.
4 13. At the sentencing hearing both the state, county, or municipality and the defendant
5 shall be permitted to present additional information bearing on the issue of sentence.
6 14. The pleas or findings of guilt shall be prior to the date of commission of the present
7 offense.
8 15. The court shall not instruct the jury as to the range of punishment or allow the jury,
9 upon a finding of guilt, to assess and declare the punishment as part of its verdict in cases of prior
10 offenders, persistent offenders, aggravated offenders, or chronic offenders.
11 306.119. 1. If an arresting officer requests a person under arrest to submit to a chemical
12 test, such request shall include the reasons of the officer for requesting the person to submit to a
13 test and shall inform the person that he or she may refuse such request but that such person's
14 refusal may be used as evidence against him or her. If a person refuses a test as provided in this
15 subsection, no test shall be given.
16 2. If a person refuses to submit to a chemical test of such person's breath, blood, urine, or
17 saliva and that person stands trial for the crimes provided in section 306.110, 306.111, or 306.112,
18 such refusal may be admissible into evidence at the trial.”; and
19
20 Further amend said bill by amending the title, enacting clause, and intersectional references
21 accordingly.

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