

# HB5611



## 98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB5611

by Rep. David Reis

### SYNOPSIS AS INTRODUCED:

625 ILCS 45/5-16

Amends the Boat Registration and Safety Act. Provides that the use or operation of an inner tube or float tube is not subject to the prohibition on operation of a watercraft while under the influence. Effective immediately.

LRB098 17004 MLW 52087 b

A BILL FOR

1 AN ACT concerning transportation.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Boat Registration and Safety Act is amended  
5 by changing Section 5-16 as follows:

6 (625 ILCS 45/5-16)

7 Sec. 5-16. Operating a watercraft under the influence of  
8 alcohol, other drug or drugs, intoxicating compound or  
9 compounds, or combination thereof.

10 (A) 1. A person shall not operate or be in actual physical  
11 control of any watercraft within this State while:

12 (a) The alcohol concentration in such person's  
13 blood or breath is a concentration at which driving a  
14 motor vehicle is prohibited under subdivision (1) of  
15 subsection (a) of Section 11-501 of the Illinois  
16 Vehicle Code;

17 (b) Under the influence of alcohol;

18 (c) Under the influence of any other drug or  
19 combination of drugs to a degree which renders such  
20 person incapable of safely operating any watercraft;

21 (c-1) Under the influence of any intoxicating  
22 compound or combination of intoxicating compounds to a  
23 degree that renders the person incapable of safely

1 operating any watercraft;

2 (d) Under the combined influence of alcohol and any  
3 other drug or drugs to a degree which renders such  
4 person incapable of safely operating a watercraft; or

5 (e) There is any amount of a drug, substance, or  
6 compound in the person's blood or urine resulting from  
7 the unlawful use or consumption of cannabis listed in  
8 the Cannabis Control Act, a controlled substance  
9 listed in the Illinois Controlled Substances Act, or an  
10 intoxicating compound listed in the Use of  
11 Intoxicating Compounds Act.

12 2. The fact that any person charged with violating this  
13 Section is or has been legally entitled to use alcohol,  
14 other drug or drugs, any intoxicating compound or  
15 compounds, or any combination of them, shall not constitute  
16 a defense against any charge of violating this Section.

17 3. Every person convicted of violating this Section  
18 shall be guilty of a Class A misdemeanor, except as  
19 otherwise provided in this Section.

20 4. Every person convicted of violating this Section  
21 shall be guilty of a Class 4 felony if:

22 (a) He has a previous conviction under this  
23 Section;

24 (b) The offense results in personal injury where a  
25 person other than the operator suffers great bodily  
26 harm or permanent disability or disfigurement, when

1 the violation was a proximate cause of the injuries. A  
2 person guilty of a Class 4 felony under this  
3 subparagraph (b), if sentenced to a term of  
4 imprisonment, shall be sentenced to a term of not less  
5 than one year nor more than 12 years; or

6 (c) The offense occurred during a period in which  
7 his or her privileges to operate a watercraft are  
8 revoked or suspended, and the revocation or suspension  
9 was for a violation of this Section or was imposed  
10 under subsection (B).

11 5. Every person convicted of violating this Section  
12 shall be guilty of a Class 2 felony if the offense results  
13 in the death of a person. A person guilty of a Class 2  
14 felony under this paragraph 5, if sentenced to a term of  
15 imprisonment, shall be sentenced to a term of not less than  
16 3 years and not more than 14 years.

17 5.1. A person convicted of violating this Section or a  
18 similar provision of a local ordinance who had a child  
19 under the age of 16 aboard the watercraft at the time of  
20 offense is subject to a mandatory minimum fine of \$500 and  
21 to a mandatory minimum of 5 days of community service in a  
22 program benefiting children. The assignment under this  
23 paragraph 5.1 is not subject to suspension and the person  
24 is not eligible for probation in order to reduce the  
25 assignment.

26 5.2. A person found guilty of violating this Section,

1 if his or her operation of a watercraft while in violation  
2 of this Section proximately caused any incident resulting  
3 in an appropriate emergency response, is liable for the  
4 expense of an emergency response as provided in subsection  
5 (m) of Section 11-501 of the Illinois Vehicle Code.

6 5.3. In addition to any other penalties and  
7 liabilities, a person who is found guilty of violating this  
8 Section, including any person placed on court supervision,  
9 shall be fined \$100, payable to the circuit clerk, who  
10 shall distribute the money to the law enforcement agency  
11 that made the arrest. In the event that more than one  
12 agency is responsible for the arrest, the \$100 shall be  
13 shared equally. Any moneys received by a law enforcement  
14 agency under this paragraph 5.3 shall be used to purchase  
15 law enforcement equipment or to provide law enforcement  
16 training that will assist in the prevention of alcohol  
17 related criminal violence throughout the State. Law  
18 enforcement equipment shall include, but is not limited to,  
19 in-car video cameras, radar and laser speed detection  
20 devices, and alcohol breath testers.

21 6. (a) In addition to any criminal penalties imposed,  
22 the Department of Natural Resources shall suspend the  
23 watercraft operation privileges of any person  
24 convicted or found guilty of a misdemeanor under this  
25 Section, a similar provision of a local ordinance, or  
26 Title 46 of the U.S. Code of Federal Regulations for a

1 period of one year, except that a first time offender  
2 is exempt from this mandatory one year suspension.

3 As used in this subdivision (A)6(a), "first time  
4 offender" means any person who has not had a previous  
5 conviction or been assigned supervision for violating  
6 this Section, a similar provision of a local ordinance  
7 or, Title 46 of the U.S. Code of Federal Regulations,  
8 or any person who has not had a suspension imposed  
9 under subdivision (B)3.1 of Section 5-16.

10 (b) In addition to any criminal penalties imposed,  
11 the Department of Natural Resources shall suspend the  
12 watercraft operation privileges of any person  
13 convicted of a felony under this Section, a similar  
14 provision of a local ordinance, or Title 46 of the U.S.  
15 Code of Federal Regulations for a period of 3 years.

16 (B) 1. Any person who operates or is in actual physical  
17 control of any watercraft upon the waters of this State  
18 shall be deemed to have given consent to a chemical test or  
19 tests of blood, breath or urine for the purpose of  
20 determining the content of alcohol, other drug or drugs,  
21 intoxicating compound or compounds, or combination thereof  
22 in the person's blood if arrested for any offense of  
23 subsection (A) above. The chemical test or tests shall be  
24 administered at the direction of the arresting officer. The  
25 law enforcement agency employing the officer shall  
26 designate which of the tests shall be administered. A urine

1 test may be administered even after a blood or breath test  
2 or both has been administered.

3 1.1. For the purposes of this Section, an Illinois Law  
4 Enforcement officer of this State who is investigating the  
5 person for any offense defined in Section 5-16 may travel  
6 into an adjoining state, where the person has been  
7 transported for medical care to complete an investigation,  
8 and may request that the person submit to the test or tests  
9 set forth in this Section. The requirements of this Section  
10 that the person be arrested are inapplicable, but the  
11 officer shall issue the person a uniform citation for an  
12 offense as defined in Section 5-16 or a similar provision  
13 of a local ordinance prior to requesting that the person  
14 submit to the test or tests. The issuance of the uniform  
15 citation shall not constitute an arrest, but shall be for  
16 the purpose of notifying the person that he or she is  
17 subject to the provisions of this Section and of the  
18 officer's belief in the existence of probable cause to  
19 arrest. Upon returning to this State, the officer shall  
20 file the uniform citation with the circuit clerk of the  
21 county where the offense was committed and shall seek the  
22 issuance of an arrest warrant or a summons for the person.

23 1.2. Notwithstanding any ability to refuse under this  
24 Act to submit to these tests or any ability to revoke the  
25 implied consent to these tests, if a law enforcement  
26 officer has probable cause to believe that a watercraft

1 operated by or under actual physical control of a person  
2 under the influence of alcohol, other drug or drugs,  
3 intoxicating compound or compounds, or any combination of  
4 them has caused the death of or personal injury to another,  
5 that person shall submit, upon the request of a law  
6 enforcement officer, to a chemical test or tests of his or  
7 her blood, breath, or urine for the purpose of determining  
8 the alcohol content or the presence of any other drug,  
9 intoxicating compound, or combination of them. For the  
10 purposes of this Section, a personal injury includes severe  
11 bleeding wounds, distorted extremities, and injuries that  
12 require the injured party to be carried from the scene for  
13 immediate professional attention in either a doctor's  
14 office or a medical facility.

15 2. Any person who is dead, unconscious or who is  
16 otherwise in a condition rendering such person incapable of  
17 refusal, shall be deemed not to have withdrawn the consent  
18 provided above, and the test may be administered.

19 3. A person requested to submit to a chemical test as  
20 provided above shall be verbally advised by the law  
21 enforcement officer requesting the test that a refusal to  
22 submit to the test will result in suspension of such  
23 person's privilege to operate a watercraft for a minimum of  
24 2 years. Following this warning, if a person under arrest  
25 refuses upon the request of a law enforcement officer to  
26 submit to a test designated by the officer, no test shall



1 be given, but the law enforcement officer shall file with  
2 the clerk of the circuit court for the county in which the  
3 arrest was made, and with the Department of Natural  
4 Resources, a sworn statement naming the person refusing to  
5 take and complete the chemical test or tests requested  
6 under the provisions of this Section. Such sworn statement  
7 shall identify the arrested person, such person's current  
8 residence address and shall specify that a refusal by such  
9 person to take the chemical test or tests was made. Such  
10 sworn statement shall include a statement that the  
11 arresting officer had reasonable cause to believe the  
12 person was operating or was in actual physical control of  
13 the watercraft within this State while under the influence  
14 of alcohol, other drug or drugs, intoxicating compound or  
15 compounds, or combination thereof and that such chemical  
16 test or tests were made as an incident to and following the  
17 lawful arrest for an offense as defined in this Section or  
18 a similar provision of a local ordinance, and that the  
19 person after being arrested for an offense arising out of  
20 acts alleged to have been committed while so operating a  
21 watercraft refused to submit to and complete a chemical  
22 test or tests as requested by the law enforcement officer.

23 3.1. The law enforcement officer submitting the sworn  
24 statement as provided in paragraph 3 of this subsection (B)  
25 shall serve immediate written notice upon the person  
26 refusing the chemical test or tests that the person's

1 privilege to operate a watercraft within this State will be  
2 suspended for a period of 2 years unless, within 28 days  
3 from the date of the notice, the person requests in writing  
4 a hearing on the suspension.

5 If the person desires a hearing, such person shall file  
6 a complaint in the circuit court for and in the county in  
7 which such person was arrested for such hearing. Such  
8 hearing shall proceed in the court in the same manner as  
9 other civil proceedings, shall cover only the issues of  
10 whether the person was placed under arrest for an offense  
11 as defined in this Section or a similar provision of a  
12 local ordinance as evidenced by the issuance of a uniform  
13 citation; whether the arresting officer had reasonable  
14 grounds to believe that such person was operating a  
15 watercraft while under the influence of alcohol, other drug  
16 or drugs, intoxicating compound or compounds, or  
17 combination thereof; and whether such person refused to  
18 submit and complete the chemical test or tests upon the  
19 request of the law enforcement officer. Whether the person  
20 was informed that such person's privilege to operate a  
21 watercraft would be suspended if such person refused to  
22 submit to the chemical test or tests shall not be an issue.

23 If the person fails to request in writing a hearing  
24 within 28 days from the date of notice, or if a hearing is  
25 held and the court finds against the person on the issues  
26 before the court, the clerk shall immediately notify the

1 Department of Natural Resources, and the Department shall  
2 suspend the watercraft operation privileges of the person  
3 for at least 2 years.

4 3.2. If the person submits to a test that discloses an  
5 alcohol concentration of 0.08 or more, or any amount of a  
6 drug, substance or intoxicating compound in the person's  
7 breath, blood, or urine resulting from the unlawful use of  
8 cannabis listed in the Cannabis Control Act, a controlled  
9 substance listed in the Illinois Controlled Substances  
10 Act, or an intoxicating compound listed in the Use of  
11 Intoxicating Compounds Act, the law enforcement officer  
12 shall immediately submit a sworn report to the circuit  
13 clerk of venue and the Department of Natural Resources,  
14 certifying that the test or tests were requested under  
15 paragraph 1 of this subsection (B) and the person submitted  
16 to testing that disclosed an alcohol concentration of 0.08  
17 or more.

18 In cases where the blood alcohol concentration of 0.08  
19 or greater or any amount of drug, substance or compound  
20 resulting from the unlawful use of cannabis, a controlled  
21 substance or an intoxicating compound is established by a  
22 subsequent analysis of blood or urine collected at the time  
23 of arrest, the arresting officer or arresting agency shall  
24 immediately submit a sworn report to the circuit clerk of  
25 venue and the Department of Natural Resources upon receipt  
26 of the test results.

1           4. A person must submit to each chemical test offered  
2           by the law enforcement officer in order to comply with the  
3           implied consent provisions of this Section.

4           5. The provisions of Section 11-501.2 of the Illinois  
5           Vehicle Code, as amended, concerning the certification and  
6           use of chemical tests apply to the use of such tests under  
7           this Section.

8           (C) Upon the trial of any civil or criminal action or  
9           proceeding arising out of acts alleged to have been committed  
10          by any person while operating a watercraft while under the  
11          influence of alcohol, the concentration of alcohol in the  
12          person's blood or breath at the time alleged as shown by  
13          analysis of a person's blood, urine, breath, or other bodily  
14          substance shall give rise to the presumptions specified in  
15          subdivisions 1, 2, and 3 of subsection (b) of Section 11-501.2  
16          of the Illinois Vehicle Code. The foregoing provisions of this  
17          subsection (C) shall not be construed as limiting the  
18          introduction of any other relevant evidence bearing upon the  
19          question whether the person was under the influence of alcohol.

20          (D) If a person under arrest refuses to submit to a  
21          chemical test under the provisions of this Section, evidence of  
22          refusal shall be admissible in any civil or criminal action or  
23          proceeding arising out of acts alleged to have been committed  
24          while the person under the influence of alcohol, other drug or  
25          drugs, intoxicating compound or compounds, or combination of  
26          them was operating a watercraft.

1           (E) The owner of any watercraft or any person given  
2 supervisory authority over a watercraft, may not knowingly  
3 permit a watercraft to be operated by any person under the  
4 influence of alcohol, other drug or drugs, intoxicating  
5 compound or compounds, or combination thereof.

6           (F) Whenever any person is convicted or found guilty of a  
7 violation of this Section, including any person placed on court  
8 supervision, the court shall notify the Office of Law  
9 Enforcement of the Department of Natural Resources, to provide  
10 the Department with the records essential for the performance  
11 of the Department's duties to monitor and enforce any order of  
12 suspension or revocation concerning the privilege to operate a  
13 watercraft.

14           (G) No person who has been arrested and charged for  
15 violating paragraph 1 of subsection (A) of this Section shall  
16 operate any watercraft within this State for a period of 24  
17 hours after such arrest.

18           (H) For purposes of this Section, the term "watercraft"  
19 shall not include inner tubes or float tubes.

20           (Source: P.A. 94-214, eff. 1-1-06; 95-149, eff. 8-14-07.)

21           Section 99. Effective date. This Act takes effect upon  
22 becoming law.