

CHAPTER 143**HABITUAL OFFENDERS OF MOTOR VEHICLE LAWS – OPERATING
WHILE INTOXICATED**

S.F. 358

AN ACT relating to certain offenders of the motor vehicle laws, by providing for an administrative adjudication of the habitual offender status, providing for a youthful offender substance abuse awareness program, requiring ignition interlock devices for temporary restricted licenses, providing penalties, and providing for the payment of fees.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 321.215, subsection 2, unnumbered paragraph 1, Code 1995, is amended to read as follows:

Upon conviction and the suspension or revocation of a person's motor vehicle license under section 321.209, subsection 5, 6, or 8; 321.210; 321.210A; or 321.513; or upon the denial of issuance of a motor vehicle license under section 321.560, based solely on offenses enumerated in section 321.555, subsection 1, paragraph "c", or section 321.555, subsection 2, and upon the denial by the director of an application for a temporary restricted license, a person may apply to the district court having jurisdiction for the residence of the person for a temporary restricted permit to operate a motor vehicle for the limited purpose or purposes specified in subsection 1. The application may be granted only if all of the following criteria are satisfied:

Sec. 2. Section 321.556, Code 1995, is amended by striking the section and inserting in lieu thereof the following:

321.556 NOTICE AND HEARING – FINDINGS AND ORDER.

1. If, upon review of the record of convictions of any person, the department determines that the person appears to be a habitual offender, the department shall immediately notify the person in writing and afford the licensee an opportunity for a hearing. The notice shall direct the person named in the notice to appear for hearing and show cause why the person should not be barred from operating a motor vehicle on the highways of this state. The notice shall meet the requirements of section 17A.12 and shall be served in the manner provided in that section. Service of notice on any nonresident of this state may be made in the same manner as provided in sections 321.498 through 321.506. A peace officer stopping a person for whom a notice to appear for hearing has been issued under the provisions of this section may personally serve the notice upon forms approved by the department to satisfy the notice requirements of this section. A peace officer may confiscate the motor vehicle license of a person if the license has been revoked or has been suspended subsequent to a hearing and the person has not forwarded the motor vehicle license to the department as required.

2. The hearing shall be conducted as provided in section 17A.12 before the department in the county where the alleged events occurred, unless the director and the person agree that the hearing may be held in some other county, or the hearing may be held by telephone conference at the discretion of the agency conducting the hearing. The hearing shall be recorded and its scope shall be limited to the issue of whether the person notified is a habitual offender.

3. An abstract certified by the director of transportation may be admitted as evidence as provided in section 622.43, at the hearing, and shall be prima facie evidence that the person named in the abstract was duly convicted by the court in which the conviction or holding was made of each offense shown by the abstract. If the person named in the abstract denies conviction of any of the relevant convictions contained in the abstract, the person shall have the burden of proving that the conviction is untrue. For purposes of this subsection, a conviction is relevant if it is for one of the offenses listed in section 321.555.

4. If the department finds that the person is not the same person named in the abstract, or otherwise concludes that the person is not a habitual offender as provided in section 321.555, the department shall issue a decision dismissing the proceedings. If the department's findings and conclusions are that the person is a habitual offender, the department shall issue an order prohibiting the person from operating a motor vehicle on the highways of this state for the period specified in section 321.560. If a person is found to be a habitual offender, the person shall surrender all licenses or permits to operate a motor vehicle in this state to the department. A person who is found to be an habitual offender may be assessed a fee by the department to cover the costs of the habitual offender proceedings. Fees assessed shall be paid before the person may be issued a license or permit to operate a motor vehicle in this state.

Sec. 3. Section 321.560, Code 1995, is amended to read as follows:

321.560 BARRED FOR SIX YEARS.

A license to operate a motor vehicle in this state shall not be issued to any person declared to be ~~an a~~ habitual offender under section 321.555, subsection 1 for a period of not less than two years nor more than six years from the date of ~~judgment as ordered by the court~~ the final decision of the department under section 17A.19 or the date on which the district court upholds the final decision of the department, whichever occurs later. ~~However, a temporary restricted license may be issued to a person declared to be a habitual offender under section 321.555, subsection 1, paragraph "c", pursuant to section 321.215, subsection 2.~~ A license to operate a motor vehicle in this state shall not be issued to any person declared to be ~~an a~~ habitual offender under section 321.555, subsection 2, for a period of one year from the date of ~~judgment~~ the final decision of the department under section 17A.19 or the date on which the district court upholds the final decision of the department, whichever occurs later. The department shall adopt rules under chapter 17A which establish a point system which shall be used to determine the period for which a person who is declared to be a habitual offender under section 321.555, subsection 1, shall not be issued a license.

Sec. 4. Section 321.561, Code 1995, is amended to read as follows:

321.561 PUNISHMENT FOR VIOLATION.

It shall be unlawful for any person ~~convicted as an~~ found to be a habitual offender to operate any motor vehicle in this state during the period of time specified in section 321.560 ~~except for a habitual offender who has been granted a temporary restricted license pursuant to section 321.215, subsection 2.~~ This conviction shall constitute A person violating this section commits an aggravated misdemeanor.

Sec. 5. Section 321J.4B, subsection 12, as enacted by 1995 Iowa Acts, Senate File 446,* is amended to read as follows:

12. Operating a motor vehicle on a street or highway in this state in violation of an order of impoundment or immobilization is a serious misdemeanor. A motor vehicle which is subject to an order of impoundment or immobilization that is operated on a street or highway in this state ~~during the period of impoundment or immobilization in violation of the order~~ shall be seized and forfeited to the state under chapter 809.

Sec. 6. Section 321J.17, Code 1995, is amended to read as follows:

321J.17 CIVIL PENALTY - DISPOSITION - REINSTATEMENT.

When the department revokes a person's motor vehicle license or nonresident operating privilege under this chapter, the department shall assess the person a civil penalty of two hundred dollars. The money collected by the department under this section shall be transmitted to the treasurer of state who shall deposit one-half of the money in the separate fund established in section 912.14 and one-half of the money shall be deposited in the general fund of the state. ~~A temporary restricted license shall not be issued or a motor vehicle license or nonresident operating privilege shall not be reinstated until the civil penalty has been paid.~~

*Chapter 48 herein

Sec. 7. Section 321J.20, Code 1995, is amended by adding the following new subsection:

NEW SUBSECTION. 6. Following the minimum period of ineligibility, a temporary restricted license under this section shall not be issued until such time as the applicant installs an ignition interlock device of a type approved by the commissioner of public safety on all motor vehicles owned or operated by the applicant, in accordance with section 321J.4, subsection 7. Installation of an ignition interlock device under this section shall be required for the period of time for which the temporary restricted license is issued, but no longer than one year, unless the court order under section 321J.4, subsection 7, provides for a longer period of time.

Sec. 8. **NEW SECTION. 321J.24A YOUTHFUL OFFENDER SUBSTANCE ABUSE AWARENESS PROGRAM.**

1. As used in this section, unless the context otherwise requires:

a. "Participant" means a person whose motor vehicle license or operating privilege has been revoked for a violation of section 321J.2A, if enacted by 1995 Iowa Acts, Senate File 446.*

b. "Program" means a substance abuse awareness program provided under a contract entered into between the provider and the commission on substance abuse of the Iowa department of public health under chapter 125.

c. "Program coordinator" means a person assigned the duty to coordinate a participant's activities in a program by the program provider.

2. A substance abuse awareness program is established in each of the regions established by the commission on substance abuse. The program shall consist of an insight class and a substance abuse evaluation, which shall be attended by the participant, to discuss issues related to the potential consequences of substance abuse. The parent or parents of the participant shall also be encouraged to participate in the program. The program provider shall consult with the participant or the parents of the participant in the program to determine the timing and appropriate level of participation for the participant and any participation by the participant's parents. The program may also include a supervised educational tour by the participant to any or all of the following:

a. A hospital or other emergency medical care facility which regularly receives victims of motor vehicle accidents, to observe treatment of appropriate victims of motor vehicle accidents involving intoxicated drivers, under the supervision of a registered nurse, physician, paramedic, or emergency medical technician.

b. A facility for the treatment of chemical substance abuse as defined in section 125.2, under the supervision of appropriately licensed medical personnel.

c. If approved by the state or county medical examiner, a morgue or a similar facility to receive appropriate educational material and instruction concerning damage caused by the consumption of alcohol or other drugs, under the supervision of the county medical examiner or deputy medical examiner.

3. If the program includes a tour, the program coordinator shall explain and discuss the experiences which may be encountered during the tour to the participant. If the program coordinator determines at any time before or during a tour that the tour may be traumatic or otherwise inappropriate for the participant, the program coordinator shall terminate the tour without prejudice to the participant.

4. Upon the revocation of the motor vehicle license or operating privileges of a person who is fourteen years of age or older for a violation of section 321J.2A, if enacted, if the person has had no previous revocations under either section 321J.2 or section 321J.2A, if enacted, a person may participate in the substance abuse awareness program. The state department of transportation shall notify a potential program participant of the possibility and potential benefits of attending a program and shall notify a potential program participant of the availability programs** which exist in the area in which the person resides. The state department of transportation shall consult with the Iowa department of public

*Chapter 48 herein

**The term "availability of programs" probably intended

health to determine what programs are available in various areas of the state. The period of revocation for a person whose motor vehicle license or operating privilege has been revoked under section 321J.2A, if enacted, shall be reduced by fifty percent upon receipt by the state department of transportation of a certification by a program provider that the person has completed a program.

5. Program providers and facilities toured during the program are not liable for any civil damages resulting from injury to the participant, or civil damages caused by the participant during or from any activities related to a tour, except for willful or grossly negligent acts intended to, or reasonably expected to result in, such injury or damage.

6. The program provider shall determine fees to be paid by participants in the program. The program fees shall be paid on a sliding scale, based upon the ability of a participant and a participant's family to pay the fees, and shall not exceed one hundred dollars per participant. The program provider shall use the fees to pay all costs associated with the program.

Sec. 9. Section 331.756, subsection 58, Code 1995, is amended by striking the subsection.

Sec. 10. Section 602.8102, subsection 52, Code 1995, is amended by striking the subsection.

Sec. 11. Section 602.8106, subsection 1, paragraph a, Code 1995, is amended to read as follows:

a. Except as otherwise provided in paragraphs "b" and "c", for filing and docketing a criminal case to be paid by the county or city which has the duty to prosecute the criminal action, payable as provided in section 602.8109, thirty dollars. When judgment is rendered against the defendant, costs collected from the defendant shall be paid to the county or city which has the duty to prosecute the criminal action to the extent necessary for reimbursement for fees paid. However, the fees which are payable by the county to the clerk of the district court for services rendered in criminal actions prosecuted under state law ~~and in habitual offender actions pursuant to section 321.556~~, and the court costs taxed in connection with the trial of those actions or appeals from the judgments in those actions are waived.

Sec. 12. Section 321J.12, subsection 5, as enacted by 1995 Iowa Acts, Senate File 446,* is amended to read as follows:

5. Upon certification, subject to penalty of perjury, by the peace officer that there existed reasonable grounds to believe that the person had been operating a motor vehicle in violation of section 321J.2A, that there existed one or more of the necessary conditions for chemical testing described in section 321J.6, subsection 1, and that the person submitted to chemical testing and the test results indicated an alcohol concentration as defined in section 321J.1 of .02 or more but less than .10, the department shall revoke the person's motor vehicle license or operating privilege for a period of ~~thirty~~ sixty days if the person has had no revocations within the previous six years under section 321J.2A, and for a period of ninety days if the person has had one or more previous revocations within the previous six years under section 321J.2A.

Sec. 13. REPEAL. Sections 321.557, 321.558, and 321.559, Code 1995, are repealed.

Sec. 14. REPORT BY DEPARTMENT OF TRANSPORTATION. The department of transportation shall, by January 15, 1996, submit a report to the general assembly regarding the number of habitual offender contested cases which take place on or after the effective date of this Act. The report shall also contain information regarding the average length and cost of conducting the hearings.

Approved May 2, 1995

*Chapter 48 herein