

**CHAPTER 1138****DRUG AND ALCOHOL OFFENSES — PENALTIES AND  
MISCELLANEOUS PROVISIONS***S.F. 2391*

**AN ACT** relating to certain drug and alcohol abuse and certain offenses which carry a mandatory minimum sentence, by allowing probation for some operating-while-intoxicated offenders after service of a mandatory minimum sentence, permitting a .15 blood alcohol level to control the penalties applicable to an offender regardless of the margin of error associated with the test device, requiring the imposition of a mandatory minimum penalty for certain methamphetamine offenses, prohibiting the granting of a deferred judgment or sentence or a suspended sentence for certain methamphetamine offenses, providing that persons convicted of certain methamphetamine offenses are ineligible for bail upon appeal, requiring the deletion from motor vehicle records after twelve years of certain youth license revocations for alcohol violations, increasing and adding certain penalties for certain drug offenses, providing for the denial of federal benefits to persons convicted of drug-related offenses, providing for an operating while intoxicated offense for persons driving after taking certain controlled substances, providing privacy and notice in certain drug and alcohol testing situations, making related changes, making penalties applicable, providing effective and retroactive applicability dates.

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

**DIVISION I**

Section 1. Section 321.12, subsection 4, Code Supplement 1997, is amended to read as follows:

4. The director shall not destroy any operating records pertaining to arrests or convictions for operating while intoxicated, in violation of section 321J.2 or operating records pertaining to revocations for violations of section 321J.2A, except that a conviction or revocation under section 321J.2 or 321J.2A shall be deleted from the operating records twelve years after the date of conviction or the effective date of revocation.

Sec. 2. Section 321J.2, subsection 3, paragraph a, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

Notwithstanding the provisions of sections 901.5 and 907.3, the court shall not defer judgment or sentencing, or suspend execution of any ~~part of the~~ mandatory minimum sentence of incarceration applicable to the defendant under subsection 2, and shall not suspend execution of any other part of a sentence not involving incarceration imposed pursuant to subsection 2, if any of the following apply:

Sec. 3. Section 321J.2, subsection 3, paragraph a, subparagraph (1), Code Supplement 1997, is amended to read as follows:

(1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with this chapter exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

Sec. 4. Section 321J.4, subsection 9, Code Supplement 1997, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Notwithstanding any provision of this chapter to the contrary, the court may order the department to issue a temporary restricted license to a person otherwise eligible for a temporary restricted license under this subsection, whose

period of revocation under this chapter has expired, but who has not met all requirements for reinstatement of the person's motor vehicle license or nonresident operating privileges.

Sec. 5. Section 321J.20, Code Supplement 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 7. Notwithstanding any provision of this chapter to the contrary, the department may issue a temporary restricted license to a person otherwise eligible for a temporary restricted license under this section, whose period of revocation under this chapter has expired, but who has not met all requirements for reinstatement of the person's motor vehicle license or nonresident operating privileges.

Sec. 6. Section 907.3, subsection 1, paragraph g, subparagraph (1), Code Supplement 1997, is amended to read as follows:

(1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with chapter 321J exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

Sec. 7. Section 907.3, subsection 2, paragraph c, subparagraph (1), Code Supplement 1997, is amended to read as follows:

(1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with chapter 321J exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

Sec. 8. Section 907.3, subsection 3, paragraph c, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

A mandatory minimum sentence of incarceration imposed pursuant to a violation of section 321J.2, subsection 1; furthermore, the court shall not suspend any part of a sentence not involving incarceration imposed pursuant to section 321J.2, subsection 2, beyond the mandatory minimum if any of the following apply:

Sec. 9. Section 907.3, subsection 3, paragraph c, subparagraph (1), Code Supplement 1997, is amended to read as follows:

(1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with chapter 321J exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

## DIVISION II

Sec. 10. Section 321J.1, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 3A. "Controlled substance" means any drug, substance, or compound that is listed in section 124.204 or 124.206, or any metabolite or derivative of the drug, substance, or compound.

Sec. 11. Section 321J.2, subsection 1, Code Supplement 1997, is amended to read as follows:

1. A person commits the offense of operating while intoxicated if the person operates a motor vehicle in this state in ~~either~~ any of the following conditions:

a. While under the influence of an alcoholic beverage or other drug or a combination of such substances.

b. While having an alcohol concentration ~~as defined in section 321J.1~~ of .10 or more.

c. While any amount of a controlled substance is present in the person, as measured in the person's blood or urine.

Sec. 12. Section 321J.2, subsections 7 and 8, Code Supplement 1997, are amended to read as follows:

7. a. Division I of this\* section does not apply to a person operating a motor vehicle while under the influence of a drug if the substance was prescribed for the person and was taken under the prescription and in accordance with the directions of a medical practitioner as defined in chapter 155A or if the substance was dispensed by a pharmacist without a prescription pursuant to the rules of the board of pharmacy examiners, if there is no evidence of the consumption of alcohol and the medical practitioner or pharmacist had not directed the person to refrain from operating a motor vehicle.

b. When charged with a violation of subsection 1, paragraph "c", a person may assert, as an affirmative defense, that the controlled substance present in the person's blood or urine was prescribed or dispensed for the person and was taken in accordance with the directions of a practitioner and the labeling directions of the pharmacy, as that person and place of business are defined in section 155A.3.

8. In any prosecution under this section, evidence of the results of analysis of a specimen of the defendant's blood, breath, or urine is admissible upon proof of a proper foundation.

a. The alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn within two hours after the defendant was driving or in physical control of a motor vehicle is presumed to be the alcohol concentration at the time of driving or being in physical control of the motor vehicle.

b. The presence of a controlled substance or other drug established by the results of analysis of a specimen of the defendant's blood or urine withdrawn within two hours after the defendant was driving or in physical control of a motor vehicle is presumed to show the presence of such controlled substance or other drug in the defendant at the time of driving or being in physical control of the motor vehicle.

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

Sec. 13. Section 321J.2, subsection 10, Code Supplement 1997, is amended to read as follows:

10. In any prosecution under this section, the results of a chemical test may not be used to prove a violation of paragraph "b" of subsection 1 if the alcohol, controlled substance, or other drug concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the chemical test does not equal ~~an alcohol concentration of .10 or more~~ or exceed the level prohibited by subsection 1.

Sec. 14. Section 321J.6, subsection 1, unnumbered paragraph 1, Code 1997, is amended to read as follows:

A person who operates a motor vehicle in this state under circumstances which give reasonable grounds to believe that the person has been operating a motor vehicle in violation of section 321J.2 or 321J.2A is deemed to have given consent to the withdrawal of specimens of the person's blood, breath, or urine and to a chemical test or tests of the specimens for the purpose of determining the alcohol concentration or presence of a controlled substance or other drugs, subject to this section. The withdrawal of the body substances and the test or tests shall be administered at the written request of a peace officer having reasonable grounds to believe that the person was operating a motor vehicle in violation of section 321J.2 or 321J.2A, and if any of the following conditions exist:

Sec. 15. Section 321J.6, subsection 1, paragraphs d and f, Code 1997, are amended to read as follows:

\* The words "Division I of this" erroneously substituted for word "This" in enrolling process

d. The preliminary breath screening test was administered and it indicated an alcohol concentration ~~as defined in equal to or in excess of the level prohibited by section 321J.1 of .10 or more~~ 321J.2.

f. The preliminary breath screening test was administered and it indicated an alcohol concentration ~~of less than 0.10~~ the level prohibited by section 321J.2, and the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol, or a combination of alcohol and another drug.

Sec. 16. Section 321J.6, subsection 3, Code 1997, is amended to read as follows:

3. Notwithstanding subsection 2, if the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol, or a combination of alcohol and another drug, a blood or urine test ~~may~~ shall be required even after ~~a blood or breath~~ another type of test has been administered. Section 321J.9 applies to a refusal to submit to a chemical test of urine or blood requested under this subsection.

Sec. 17. Section 321J.8, subsection 2, Code 1997, is amended to read as follows:

2. If the person submits to the test and the results indicate the presence of a controlled substance or other drug, or an alcohol concentration as defined in equal to or in excess of the level prohibited by section 321J.1 of .10 or more, or the person is under the age of twenty-one and the results indicate an alcohol concentration of .02 or more, but less than .10 321J.2 or 321J.2A, the person's motor vehicle license or nonresident operating privilege will be revoked by the department as required by and for the applicable period specified under section 321J.12.

Sec. 18. Section 321J.10, subsection 4, Code 1997, is amended to read as follows:

4. a. Search warrants issued under this section shall authorize and direct peace officers to secure the withdrawal of blood specimens by medical personnel under section 321J.11. Reasonable care shall be exercised to ensure the health and safety of the persons from whom specimens are withdrawn in execution of the warrants.

b. If a person from whom a specimen is to be withdrawn objects to the withdrawal of blood, ~~and the warrant may be executed as follows:~~

(1) If the person is capable of giving a specimen of breath, and a direct breath testing instrument is readily available, the warrant may be executed by the withdrawal of a specimen of breath for chemical testing, unless the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol, or a combination of alcohol and another drug.

(2) If the testimony in support of the warrant sets forth facts and information that the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol, or a combination of alcohol and another drug, a urine sample shall be collected in lieu of a blood sample, if the person is capable of giving a urine sample and the sample can be collected without the need to physically compel the execution of the warrant.

Sec. 19. Section 321J.11, unnumbered paragraph 1, Code 1997, is amended to read as follows:

Only a licensed physician, licensed physician assistant as defined in section 148C.1, medical technologist, or registered nurse, acting at the request of a peace officer, may withdraw a specimen of blood for the purpose of determining the alcohol concentration or the presence of a controlled substance or other drugs. However, any peace officer, using devices and methods approved by the commissioner of public safety, may take a specimen of a person's breath or urine for the purpose of determining the alcohol concentration, or may take a specimen of a person's urine for the purpose of determining the presence of a controlled substance or other drugs. Only new equipment kept under strictly sanitary and sterile conditions shall be used for drawing blood.

Sec. 20. Section 321J.12, subsections 1, 3, 4, and 6, Code Supplement 1997, are amended to read as follows:

1. Upon certification, subject to penalty for 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.2, 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 the presence of a controlled substance or other drug, or an alcohol concentration as defined in equal to or in excess of the level prohibited by section 321J.1 of .10 or more 321J.2, or a combination of alcohol and another drug in violation of section 321J.2, the department shall revoke the person's motor vehicle license or nonresident operating privilege for the following periods of time:

- a. One hundred eighty days if the person has had no revocation under this chapter.
- b. One year if the person has had a previous revocation under this chapter.

3. The effective date of the revocation shall be ten days after the department has mailed notice of revocation to the person by certified mail. The peace officer who requested or directed the administration of the chemical test may, on behalf of the department, serve immediate notice of revocation on a person whose test results indicated the presence of a controlled substance or other drug, or an alcohol concentration of .10 or more equal to or in excess of the level prohibited by section 321J.2, or a combination of alcohol and another controlled substance or drug in violation of section 321J.2.

4. If the peace officer serves that immediate notice, the peace officer shall take the person's Iowa license or permit, if any, and issue a temporary license valid only for ten days. The peace officer shall immediately send the person's driver's license to the department along with the officer's certificate indicating that the test results indicated the presence of a controlled substance or other drug, or an alcohol concentration of .10 or more equal to or in excess of the level prohibited by section 321J.2.

6. The results of a chemical test may not be used as the basis for a revocation of a person's motor vehicle license or nonresident operating privilege if the alcohol or drug concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the chemical test does is not equal an alcohol concentration of .10 or more for violations under to or in excess of the level prohibited by section 321J.2 or of .02 or more for violations of section 321J.2A.

Sec. 21. Section 321J.13, subsection 2, Code Supplement 1997, is amended to read as follows:

2. The department shall grant the person an opportunity to be heard within forty-five days of receipt of a request for a hearing if the request is made not later than ten days after receipt of notice of revocation served pursuant to section 321J.9 or 321J.12. The hearing shall be 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 may be recorded and its scope shall be limited to the issues of whether a peace officer had reasonable grounds to believe that the person was operating a motor vehicle in violation of section 321J.2 or ~~section~~ 321J.2A and either one or more of the following:

- a. Whether the person refused to submit to the test or tests.
- b. Whether a test was administered and the test results indicated an alcohol concentration as defined in equal to or in excess of the level prohibited under section 321J.1 of .10 or more or whether a test was administered and the test results indicated an alcohol concentration as defined in section 321J.1 of .02 or more pursuant to section 321J.2 or 321J.2A.
- c. Whether a test was administered and the test results indicated the presence of alcohol, a controlled substance or other drug, or a combination of alcohol and another drug, in violation of section 321J.2.

Sec. 22. Section 321J.15, Code 1997, is amended to read as follows:

321J.15 EVIDENCE IN ANY ACTION.

Upon the trial of a civil or criminal action or proceeding arising out of acts alleged to have been committed by a person while operating a motor vehicle in violation of section 321J.2 or 321J.2A, evidence of the alcohol concentration or the presence of a controlled substance or other drugs in the person's body substances at the time of the act alleged as shown by a chemical analysis of the person's blood, breath, or urine is admissible. If it is established at trial that an analysis of a breath specimen was performed by a certified operator using a device intended to determine alcohol concentration and methods approved by the commissioner of public safety, no further foundation is necessary for introduction of the evidence.

Sec. 23. Section 321J.18, Code 1997, is amended to read as follows:

321J.18 OTHER EVIDENCE.

This chapter does not limit the introduction of any competent evidence bearing on the question of whether a person was under the influence of an alcoholic beverage or a controlled substance or other drug, including the results of chemical tests of specimens of blood, breath, or urine obtained more than two hours after the person was operating a motor vehicle.

### DIVISION III

Sec. 24. Section 124.401, subsection 1, paragraph d, Code Supplement 1997, is amended to read as follows:

d. Violation of this subsection, with respect to any other controlled substances, counterfeit substances, or simulated controlled substances classified in schedule IV or V is an aggravated misdemeanor. However, violation of this subsection involving fifty kilograms or less of marijuana, is a class "D" felony, and in addition to the provisions of section 902.9, subsection 4, shall be punished by a fine of not less than one thousand dollars nor more than five seven thousand five hundred dollars.

Sec. 25. Section 124.401, subsection 5, Code Supplement 1997, is amended to read as follows:

5. It is unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection is guilty of a serious misdemeanor for a first offense. A person who commits a violation of this subsection and who has previously been convicted of violating this subsection is guilty of an aggravated misdemeanor. A person who commits a violation of this subsection and has previously been convicted two or more times of violating this subsection is guilty of a class "D" felony.

PARAGRAPH DIVIDED. If the controlled substance is marijuana, the punishment shall be by imprisonment in the county jail for not more than six months or by a fine of not more than one thousand dollars, or by both such fine and imprisonment for a first offense. If the controlled substance is marijuana and the person has been previously convicted of a violation of this subsection in which the controlled substance was marijuana, the punishment shall be as provided in section 903.1, subsection 1, paragraph "b". If the controlled substance is marijuana and the person has been previously convicted two or more times of a violation of this subsection in which the controlled substance was marijuana, the person is guilty of an aggravated misdemeanor.

PARAGRAPH DIVIDED. All or any part of a sentence imposed pursuant to this ~~section~~ subsection may be suspended and the person placed upon probation upon such terms and conditions as the court may impose including the active participation by such person in a drug treatment, rehabilitation or education program approved by the court.

## DIVISION IV

Sec. 26. Section 901.5, Code 1997, is amended by adding the following new subsections:  
NEW SUBSECTION. 11. In addition to any sentence or other penalty imposed against the defendant for an offense under chapter 124, the court shall consider the provisions of 21 U.S.C. § 862, regarding the denial of federal benefits to drug traffickers and possessors convicted under state or federal law, and may enter an order specifying the range and scope of benefits to be denied to the defendant, according to the provisions of 21 U.S.C. § 862. For the purposes of this subsection, "federal benefit" means the issuance of any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or through the appropriation of funds of the United States, but does not include any retirement, welfare, social security, health, disability, veterans, public housing, or similar benefit for which payments or services are required for eligibility. The supreme court may adopt rules establishing sentencing guidelines consistent with this subsection and 21 U.S.C. § 862. The clerk of the district court shall send a copy of any order issued pursuant to this subsection to the denial of federal benefits program of the United States department of justice, along with any other forms and information required by the department.

NEW SUBSECTION. 12. In addition to any sentence or other penalty imposed against the defendant for an offense under chapter 124, the court shall consider the denial of state benefits to the defendant, and may enter an order specifying the range and scope of benefits to be denied to the defendant, comparable to the federal benefits denied under subsection 11. For the purposes of this subsection, "state benefit" means the issuance of any grant, contract, loan, professional license, or commercial license provided by a state agency, department, program, or otherwise through the appropriation of funds of the state, but does not include any retirement, welfare, health, disability, veterans, public housing, or similar benefit. The supreme court may adopt rules establishing sentencing guidelines consistent with this subsection and comparable to the guidelines for denial of federal benefits in 21 U.S.C. § 862. The clerk of the district court shall send a copy of any order issued pursuant to this subsection to each state agency, department, or program required to deny benefits pursuant to such an order.

## DIVISION V

Sec. 27. Section 811.1, subsection 2, Code Supplement 1997, is amended to read as follows:

2. A defendant appealing a conviction of a class "A" felony, murder, any class "B" felony included in section 707.6A, felonious assault, felonious child endangerment, sexual abuse in the second degree, sexual abuse in the third degree, kidnapping, robbery in the first degree, arson in the first degree, or burglary in the first degree, ~~or~~ any felony included in section 124.401, subsection 1, paragraph "a", or a violation of section 124.401, subsection 1, paragraph "b".

Sec. 28. Section 901.10, Code 1997, is amended to read as follows:

901.10 IMPOSITION OF MANDATORY MINIMUM SENTENCES.

1. A court sentencing a person for the person's first conviction under section 124.406, 124.413, or 902.7 may, at its discretion, sentence the person to a term less than provided by the statute if mitigating circumstances exist and those circumstances are stated specifically in the record. ~~However, the~~

2. Notwithstanding subsection 1, if the sentence under section 124.413 involves a methamphetamine offense under section 124.401, subsection 1, paragraph "a" or "b", the court shall not grant any reduction of sentence unless the defendant pleads guilty. If the defendant pleads guilty, the court may, at its discretion, reduce the mandatory minimum sentence by up to one-third. If the defendant additionally cooperates in the prosecution of other persons involved in the sale or use of controlled substances, and if the prosecutor requests an additional reduction in defendant's sentence because of such cooperation, the court may

grant a further reduction in defendant's mandatory minimum sentence, up to one-half of the remaining mandatory minimum sentence.

3. The state may appeal the discretionary decision on the grounds that the stated mitigating circumstances do not warrant a reduction of the sentence.

Sec. 29. Section 907.3, subsection 1, Code Supplement 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. k. The offense is a violation of section 124.401, subsection 1, paragraph "a" or "b", and the controlled substance is methamphetamine.

Sec. 30. Section 907.3, subsection 2, Code Supplement 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. e. The offense is a violation of section 124.401, subsection 1, paragraph "a" or "b", and the controlled substance is methamphetamine.

Sec. 31. Section 907.3, subsection 3, Code Supplement 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. e. The offense is a violation of section 124.401, subsection 1, paragraph "a" or "b", and the controlled substance is methamphetamine.

#### DIVISION VI

Sec. 32. Section 730.5, subsection 7, paragraph a, as enacted in 1998 Iowa Acts, House File 299,\* section 1, is amended to read as follows:

a. The collection of samples shall be performed under sanitary conditions and with regard for the privacy of the individual from whom the specimen is being obtained and in a manner reasonably calculated to preclude contamination or substitution of the specimen. If the sample collected is urine, procedures shall be established to provide for individual privacy in the collection of the sample unless there is a reasonable suspicion that a particular individual subject to testing may alter or substitute the urine specimen to be provided, or has previously altered or substituted a urine specimen provided pursuant to a drug or alcohol test. For purposes of this paragraph, "individual privacy" means a location at the collection site where urination can occur in private, which has been secured by visual inspection to ensure that other persons are not present, which provides that undetected access to the location is not possible during urination, and which provides for the ability to effectively restrict access to the location during the time the specimen is provided. If an individual is providing a sample and collection of the sample is directly monitored or observed by another individual, the individual who is directly monitoring or observing the collection shall be of the same gender as the individual from whom the sample is being collected.

Sec. 33. Section 730.5, subsection 9, paragraph a, as enacted in 1998 Iowa Acts, House File 299,\* section 1, is amended to read as follows:

a. (1) Drug or alcohol testing or retesting by an employer shall be carried out within the terms of a written policy which has been provided to every employee subject to testing, and is available for review by employees and prospective employees. If an employee or prospective employee is a minor, the employer shall provide a copy of the written policy to a parent of the employee or prospective employee and shall obtain a receipt or acknowledgement from the parent that a copy of the policy has been received. Providing a copy of the written policy to a parent of a minor by certified mail, return receipt requested, shall satisfy the requirements of this subparagraph.

(2) In addition, the written policy shall provide that any notice required by subsection 7, paragraph "i", to be provided to an individual pursuant to a drug or alcohol test conducted pursuant to this section, shall also be provided to the parent of the individual by certified mail, return receipt requested, if the individual tested is a minor.

(3) In providing information or notice to a parent as required by this paragraph, an

\* Chapter 1011 herein



employer shall rely on the information regarding the identity of a parent as provided by the minor.

(4) For purposes of this paragraph, "minor" means an individual who is under eighteen years of age and is not considered by law to be an adult, and "parent" means one biological or adoptive parent, a stepparent, or a legal guardian or custodian of the minor.

#### DIVISION VII

Sec. 34. IMPLEMENTATION OF ACT. Section 25B.2, subsection 3, shall not apply to this Act.

Sec. 35. EFFECTIVE DATES. Division VI of this Act takes effect upon enactment or April 16, 1998, whichever is later.

Sec. 36. RETROACTIVE APPLICABILITY. Sections 4 and 5 of this Act are retroactively applicable to July 1, 1997, and are applicable on and after that date.

Sec. 37. EFFECTIVE DATE. Division I of this Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 22, 1998

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## CHAPTER 1139

### SANITARY DISTRICTS — CREATION AND ANNEXATION

H.F. 2175

**AN ACT** relating to the creation of, and annexation of property to, a sanitary sewer district.

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

Section 1. Section 358.5, unnumbered paragraph 1, Code 1997, is amended to read as follows:

The board of supervisors to whom the petition is addressed shall preside at the hearing provided for in section 358.4 and shall continue the hearing in session, with adjournments from day to day, if necessary, until completed, without being required to give any further notice of the hearing. Proof of the residences and qualifications of the petitioners as eligible electors shall be made by affidavit or otherwise as the board may direct. The board may consider the boundaries of a proposed sanitary district, whether they shall be as described in the petition or otherwise, and for that purpose may alter and amend the petition and limit or change the boundaries of the proposed district as stated in the petition. The board shall adjust the boundaries of a proposed district as needed to exclude land that has no reasonable likelihood of benefit from inclusion in the proposed district. The boundaries of a proposed district shall not be changed to incorporate property not included in the original petition and published notice until the owner of the property is given notice of inclusion as on the original hearing. All persons in the proposed district shall have an opportunity to be heard regarding the location and boundaries of the proposed district and to make suggestions regarding the location and boundaries, ~~and the~~. The board of supervisors, after hearing the statements, evidence and suggestions made and offered at the hearing, shall enter an order fixing and determining the limits and boundaries of the proposed district and directing that an election be held for the purpose of submitting to the registered voters ~~owning~~