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SENATE FILE 2132
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HAGERLA, CORNING and RENSINK

(COMPANION TO LSB 7646H BY GARMAN)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to operation of a motor vehicle while under the
2 influence of alcohol or a drug and providing for minimum
3 periods of license revocation and for minimum terms of
4 confinement on consecutive days.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 2132

1 Section 1. Section 321J.2, subsection 2, Code 1989, is
2 amended by adding the following new unnumbered paragraph:
3 NEW UNNUMBERED PARAGRAPH. A minimum term of imprisonment
4 in a county jail or community-based correctional facility
5 imposed on a person convicted of a second or subsequent
6 offense under paragraph "b" or "c" shall be served on
7 consecutive days. However, if the sentencing court finds by
8 clear and convincing evidence that service of the full minimum
9 term on consecutive days would work an undue hardship on the
10 person, the court may order the person to serve not less than
11 forty-eight consecutive hours of the minimum term and to
12 perform not less than two hundred forty hours of unpaid
13 community service.

14 Sec. 2. Section 321J.4, subsection 8, Code 1989, is
15 amended to read as follows:

16 8. A person whose motor vehicle license has been revoked
17 under this chapter and who is not eligible for a temporary
18 restricted license under this chapter may petition the court
19 for an order to the department to require the department to
20 issue a temporary restricted license to the person following
21 the expiration of any minimum revocation period provided for
22 under section 321J.20. ~~The court shall determine if the~~
23 ~~temporary restricted license is necessary for the person to~~
24 ~~maintain the person's present employment.~~ Notice of and an
25 opportunity to request a hearing on the petition shall be
26 provided to the department and to the prosecuting attorney by
27 the clerk of the district court in the county where the
28 violation resulting in the revocation was committed. If the
29 court determines that any minimum revocation period provided
30 for under section 321J.20 has expired and the temporary
31 restricted license is necessary for the person to maintain the
32 person's present employment, the court shall may order the
33 department to issue to the person a temporary restricted
34 license conditioned upon the person's certification to the
35 court of the installation of approved ignition interlock

1 devices in all motor vehicles that it is necessary for the
2 person to operate to maintain the person's present employment.
3 If the person operates a motor vehicle which does not have an
4 approved ignition interlock device or if the person tampers
5 with or circumvents an ignition interlock device, in addition
6 to other penalties provided, the person's temporary restricted
7 license shall be revoked.

8 Sec. 3. Section 321J.8, Code 1989, is amended to read as
9 follows:

10 321J.8 STATEMENT OF OFFICER.

11 A person who has been requested to submit to a chemical
12 test shall be advised by a peace officer of the following:

13 1. If the person refuses to submit to the test, the
14 person's motor vehicle license or operating privilege will be
15 revoked by the department for the applicable period under
16 section 321J.9 and the person will not be eligible for a
17 temporary restricted license until at least the first ninety
18 days of the revocation period have expired.

19 2. If the person submits to the test and the results
20 indicate an alcohol concentration as defined in section 321J.1
21 of ~~±0~~ .08 or more, the person's motor vehicle license or
22 operating privilege will be revoked by the department for the
23 applicable period under section 321J.12 and the person will
24 not be eligible for a temporary restricted license until at
25 least the first thirty days of the revocation period have
26 expired.

27 This section does not apply in any case involving a person
28 described in section 321J.7.

29 Sec. 4. Section 321J.13, subsection 5, Code Supplement
30 1989, is amended to read as follows:

31 5. The Notwithstanding the Iowa administrative procedure
32 Act, chapter 17A, the department shall not stay the revocation
33 of a person's motor vehicle license or operating privilege for
34 the period that the person is contesting the revocation under
35 this section or section 321J.14 if-it-is-shown-to-the

1 satisfaction-of-the-department-that-the-new-evidence-is
2 material-and-that-there-were-valid-reasons-for-failure-to
3 present-it-in-the-contested-case-proceeding-before-the
4 department unless the first ninety days of the revocation
5 period under section 321J.9 or the first thirty days of a
6 revocation period under 321J.12 have expired.

7 Sec. 5. Section 321J.20, subsection 1, Code 1989, is
8 amended to read as follows:

9 1. The department may, on application, issue a temporary
10 restricted license to a person whose motor vehicle license is
11 revoked under this chapter allowing the person to drive to and
12 from the person's home and specified places at specified times
13 which can be verified by the department and which are required
14 by the person's full-time or part-time employment, continuing
15 health care or the continuing health care of another who is
16 dependent upon the person, continuing education while enrolled
17 in an educational institution on a part-time or full-time
18 basis and while pursuing a course of study leading to a
19 diploma, degree, or other certification of successful
20 educational completion, substance abuse treatment, and court-
21 ordered community service responsibilities if the person's
22 motor vehicle license has not been revoked under section
23 321J.4, 321J.9, or 321J.12 within the previous six years and
24 if any of the following apply:

25 a. The person's motor vehicle license is revoked under
26 section 321J.4, subsection 1, 2, 4, or 6.

27 b. The person's motor vehicle license is revoked under
28 section 321J.9, and the person has entered a plea of guilty on
29 a charge of a violation of section 321J.2 which arose from the
30 same set of circumstances which resulted in the person's motor
31 vehicle license revocation under section 321J.9, and the
32 guilty plea is not withdrawn at the time of or after
33 application for the temporary restricted license, and the
34 first ninety days of the revocation period have expired.

35 c. The person's motor vehicle license is revoked under

1 section 321J.12 and the first thirty days of the revocation
2 period have expired.

3 However, a temporary restricted license may be issued if
4 the person's motor vehicle license is revoked under section
5 321J.9, and the revocation is a second revocation under this
6 chapter, and the first three hundred and sixty sixty-five days
7 of the revocation have expired.

8 Sec. 6. Section 3 of this Act, as it amends the alcohol
9 concentration from .10 to .08, is null and void and has no
10 effect unless by other legislative action, section 321J.2,
11 subsection 1, paragraph "b", Code 1989, is amended in the
12 identical manner.

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EXPLANATION

14 This bill provides that the minimum term of confinement in
15 a county jail or community-based correctional facility imposed
16 on a second or subsequent offender under chapter 321J,
17 operating while under the influence of alcohol or a drug, is
18 to be served on consecutive days unless the court finds that
19 serving the term on consecutive days would work an undue
20 hardship on the person. If the court makes such a finding,
21 the court may order the person to serve not less than 48
22 consecutive hours of the minimum term and perform not less
23 than 240 hours of unpaid community service.

24 The bill establishes minimum revocation periods of 30 days
25 if the person submitted to a chemical test resulting in an
26 indication of an alcohol concentration of .08 or more, 90 days
27 if the person refuses to submit to a chemical test, and 365
28 (from 360) days for a person who has had one previous
29 revocation under chapter 321J within the previous six years.

30 The bill requires that the local prosecuting attorney and
31 the state department of transportation be given notice by the
32 clerk of court of, and the opportunity to request a hearing
33 on, a petition for a temporary restricted license under
34 section 321J.4.

35 The bill also provides that the change in section 3

1 lowering the alcohol concentration from .10 to .08 is only
2 effective upon the enactment of the identical change in
3 section 321J.2, subsection 1, paragraph "b".

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