

FILED MAR 10 1993

SENATE FILE 388
BY COMMITTEE ON TRANSPORTATION

(SUCCESSOR TO SSB 186)

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

A BILL FOR

1 An Act relating to the offense of operating while intoxicated,
2 providing for minimum hours of community service for certain
3 offenders, minimum periods of license revocation, and other
4 related matters.

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

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SF388

1 Section 1. Section 321J.4, subsections 1 and 2, subsection
2 3, paragraph a, and subsections 4, 5, and 8, Code 1993, are
3 amended to read as follows:

4 1. If a defendant is convicted of a violation of section
5 321J.2 and the defendant's motor vehicle license or
6 nonresident operating privilege has not been revoked under
7 section 321J.9 or 321J.12 for the occurrence from which the
8 arrest arose, the department shall revoke the defendant's
9 motor vehicle license or nonresident operating privilege for
10 one hundred eighty days if the defendant has had no previous
11 conviction ~~under section 321J.2~~ or revocation under section
12 ~~321J.9 or 321J.12~~ this chapter within the previous six years
13 and the defendant shall not be eligible for any temporary
14 restricted license for at least thirty days after the
15 effective date of the revocation if a test was obtained, and
16 for at least ninety days if a test was refused.

17 If a defendant is convicted of a violation of section
18 321J.2, and the defendant's motor vehicle license or
19 nonresident operating privilege has not already been revoked
20 under section 321J.9 or 321J.12 for the occurrence from which
21 the arrest arose, the department shall revoke the defendant's
22 motor vehicle license or nonresident operating privilege for
23 one year if the defendant has had one or more previous
24 convictions or revocations under these sections this chapter
25 within the previous six years. The defendant shall not be
26 eligible for any temporary restricted license during the
27 entire one year revocation period.

28 2. If the court defers judgment pursuant to section 907.3
29 for a violation of section 321J.2, and if the defendant's
30 motor vehicle license or nonresident operating privilege has
31 not been revoked under section 321J.9 or 321J.12, or has not
32 otherwise been revoked for the occurrence from which the
33 arrest arose, the court shall order the department to revoke
34 the defendant's motor vehicle license or nonresident operating
35 privilege for a period of not less than thirty days nor more

1 than ninety days ~~if the defendant's motor vehicle license or~~
2 ~~nonresident operating privilege has not been revoked under~~
3 ~~section 321J.9 or 321J.12 or has not otherwise been revoked~~
4 ~~for the occurrence from which the arrest arose.~~ The defendant
5 shall not be eligible for any temporary restricted license for
6 at least thirty days after the effective date of the
7 revocation if a test was obtained and for at least ninety days
8 if a test was refused. The court shall immediately require
9 the defendant to surrender to it all Iowa licenses or permits
10 held by the defendant, which the court shall forward to the
11 department with a copy of the order deferring judgment.

12 a. Upon a plea or verdict of guilty of a third or
13 subsequent violation of section 321J.2, the court shall order
14 the department to revoke the defendant's motor vehicle license
15 or nonresident operating privilege for a period of six years.
16 The defendant shall not be eligible for a temporary restricted
17 license for at least one year after the effective date of the
18 revocation. The court shall require the defendant to
19 surrender to it all Iowa licenses or permits held by the
20 defendant, which the court shall forward to the department
21 with a copy of the order for revocation.

22 4. Upon a plea or verdict of guilty of a violation of
23 section 321J.2 which involved a personal injury, the court
24 shall determine in open court, from consideration of the
25 information in the file and any other evidence the parties may
26 submit, whether a serious injury was sustained by any person
27 other than the defendant and, if so, whether the defendant's
28 conduct in violation of section 321J.2 caused the serious
29 injury. If the court so determines, the court shall order the
30 department to revoke the defendant's motor vehicle license or
31 nonresident operating privilege for a period of one year in
32 addition to any other period of suspension or revocation. The
33 defendant shall not be eligible for any temporary restricted
34 license until the minimum period of ineligibility has expired
35 under section 321J.4, 321J.9, 321J.12, or 321J.20. The

1 defendant shall surrender to the court any Iowa license or
2 permit and the court shall forward it to the department with a
3 copy of the order for revocation.

4 5. Upon a plea or verdict of guilty of a violation of
5 section 321J.2 which involved a death, the court shall
6 determine in open court, from consideration of the information
7 in the file and any other evidence the parties may submit,
8 whether a death occurred and, if so, whether the defendant's
9 conduct in violation of section 321J.2 caused the death. If
10 the court so determines, the court shall order the department
11 to revoke the defendant's motor vehicle license or nonresident
12 operating privilege for a period of six years. The defendant
13 shall not be eligible for any temporary restricted license
14 until the minimum period of ineligibility has expired under
15 section 321J.4, 321J.9, 321J.12, or 321J.20. The defendant
16 shall surrender to the court any Iowa license or permit and
17 the court shall forward it to the department with a copy of
18 the order for revocation.

19 8. A person whose motor vehicle license has either been
20 revoked under this chapter, or revoked or suspended under
21 chapter 321 solely for violations of this chapter, or who has
22 been determined to be a habitual offender under chapter 321
23 based solely on violations of this chapter, and who is not
24 eligible for a temporary restricted license under this chapter
25 may petition the court upon the expiration of the minimum
26 period of ineligibility for a temporary restricted license
27 provided for under section 321J.4, 321J.9, 321J.12, or 321J.20
28 for an order to the department to require the department to
29 issue a temporary restricted license to the person
30 notwithstanding section 321.560. Upon the filing of a
31 petition for a temporary restricted license under this
32 section, the clerk of the district court in the county where
33 the violation that resulted in the revocation occurred shall
34 send notice of the petition to the department and the
35 prosecuting attorney. The department and the prosecuting

1 attorney shall each be given an opportunity to respond to and
2 request a hearing on the petition. The court shall determine
3 if the temporary restricted license is necessary for the
4 person to maintain the person's present employment. If the
5 court determines that the temporary restricted license is
6 necessary for the person to maintain the person's present
7 employment, and that the minimum period of ineligibility for
8 receipt of a temporary license has expired, the court shall
9 order the department to issue to the person a temporary
10 restricted license conditioned upon the person's certification
11 to the court of the installation of approved ignition
12 interlock devices in all motor vehicles that it is necessary
13 for the person to operate to maintain the person's present
14 employment. Section 321.561 does not apply to a person
15 operating a motor vehicle in the manner permitted under this
16 subsection. If the person operates a motor vehicle which does
17 not have an approved ignition interlock device or if the
18 person tampers with or circumvents an ignition interlock
19 device, in addition to other penalties provided, the person's
20 temporary restricted license shall be revoked. A person
21 holding a temporary restricted license issued under this
22 subsection shall not operate a commercial motor vehicle, as
23 defined in section 321.1, on a highway if a commercial
24 driver's license is required for the person to operate the
25 commercial motor vehicle.

26 Sec. 2. Section 321J.4, Code 1993, is amended by adding
27 the following new subsection:

28 NEW SUBSECTION. 9. Notwithstanding sections 321J.9 and
29 321J.12, if a person is acquitted of a violation of section
30 321J.2, the person's motor vehicle license or nonresident
31 operating privileges shall not be revoked for a violation of
32 section 321J.9 or 321J.12. However, if the person's motor
33 vehicle license or nonresident operating privileges have been
34 previously revoked under section 321J.9 or 321J.12, and the
35 person is acquitted of a violation of section 321J.2, the

1 person's license or operating privileges shall be restored and
2 the person's motor vehicle registration and license plates
3 returned. The court, upon entry of a judgment of acquittal
4 for a violation of section 321J.2 shall forward a copy of the
5 judgment to the department.

6 Sec. 3. Section 321J.8, Code 1993, is amended to read as
7 follows:

8 321J.8 STATEMENT OF OFFICER.

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

11 1. If the person refuses to submit to the test, the
12 person's motor vehicle license or nonresident operating
13 privilege will be revoked by the department as required by and
14 for the applicable period specified under section 321J.9.

15 2. If the person submits to the test and the results
16 indicate an alcohol concentration as defined in section 321J.1
17 of .10 or more, the person's motor vehicle license or
18 nonresident operating privilege will be revoked by the
19 department as required by and for the applicable period
20 specified under section 321J.12.

21 3. If the person is operating a commercial motor vehicle
22 as defined in section 321.1 and either refuses to submit to
23 the test or submits to the test and the results indicate an
24 alcohol concentration of 0.04 or more, the person is
25 disqualified from operating a commercial motor vehicle for the
26 applicable period under section 321.208 in addition to any
27 revocation of the person's motor vehicle license or
28 nonresident operating privilege which may be applicable under
29 this chapter.

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

32 Sec. 4. Section 321J.9, Code 1993, is amended to read as
33 follows:

34 321J.9 REFUSAL TO SUBMIT -- REVOCATION.

35 1. If a person refuses to submit to the chemical testing,

1 a test shall not be given, but the department, upon the
2 receipt of the peace officer's certification, subject to
3 penalty for perjury, that the officer had reasonable grounds
4 to believe the person to have been operating a motor vehicle
5 in violation of section 321J.2, that specified conditions
6 existed for chemical testing pursuant to section 321J.6, and
7 that the person refused to submit to the chemical testing,
8 shall revoke the person's motor vehicle license and any
9 nonresident operating privilege for ~~a period~~ the following
10 periods of two time:

11 a. Two hundred forty days if the person has no previous
12 revocation within the previous six years under this chapter;
13 and five

14 b. Five hundred forty days if the person has one or more
15 previous revocations within the previous six years under this
16 chapter; ~~or if.~~

17 2. A person whose motor vehicle license or nonresident
18 operating privileges are revoked for two hundred forty days
19 under subsection 1, paragraph "a", shall not be eligible for a
20 temporary restricted license for at least ninety days after
21 the effective date of the revocation. A person whose motor
22 vehicle license or nonresident operating privileges are
23 revoked for five hundred forty days under subsection 1,
24 paragraph "b", shall not be eligible for a temporary
25 restricted license for at least one year after the effective
26 date of the revocation.

27 3. If the person is a resident without a license or permit
28 to operate a motor vehicle in this state, the department shall
29 deny to the person the issuance of a license or permit for the
30 same period a license or permit would be revoked, and deny
31 issuance of a temporary restricted license for the same period
32 of ineligibility for receipt of a temporary restricted
33 license, subject to review as provided in this chapter. The
34 effective date of revocation shall be twenty ten days after
35 the department has mailed notice of revocation to the person

1 by certified mail or, on behalf of the department, a peace
2 officer offering or directing the administration of a chemical
3 test may serve immediate notice of intention to revoke and of
4 revocation on a person who refuses to permit chemical testing.
5 If the peace officer serves that immediate notice, the peace
6 officer shall take the Iowa license or permit of the driver,
7 if any, and issue a temporary license effective for only
8 twenty ten days. The peace officer shall immediately send the
9 person's license to the department along with the officer's
10 certificate indicating the person's refusal to submit to
11 chemical testing.

12 Sec. 5. Section 321J.12, Code 1993, is amended to read as
13 follows:

14 321J.12 TEST RESULT REVOCATION.

15 1. Upon certification, subject to penalty for perjury, by
16 the peace officer that there existed reasonable grounds to
17 believe that the person had been operating a motor vehicle in
18 violation of section 321J.2, that there existed one or more of
19 the necessary conditions for chemical testing described in
20 section 321J.6, subsection 1, and that the person submitted to
21 chemical testing and the test results indicated an alcohol
22 concentration as defined in section 321J.1 of .10 or more, the
23 department shall revoke the person's motor vehicle license or
24 nonresident operating privilege for ~~a period~~ the following
25 periods of one time:

26 a. One hundred eighty days if the person has had no
27 revocation within the previous six years under this chapter,
28 and one

29 b. One year if the person has had one or more previous
30 revocations within the previous six years under this chapter.

31 2. A person whose motor vehicle license or nonresident
32 operating privileges have been revoked under subsection 1,
33 paragraph "a", shall not be eligible for any temporary
34 restricted license for at least thirty days after the
35 effective date of the revocation. A person whose license or

1 privileges have been revoked under subsection 1, paragraph
2 "b", for one year shall not be eligible for any temporary
3 restricted license for one year after the effective date of
4 the revocation.

5 3. The effective date of the revocation shall be twenty
6 ten days after the department has mailed notice of revocation
7 to the person by certified mail. The peace officer who
8 requested or directed the administration of the chemical test
9 may, on behalf of the department, serve immediate notice of
10 revocation on a person whose test results indicated an alcohol
11 concentration of .10 or more.

12 4. If the peace officer serves that immediate notice, the
13 peace officer shall take the person's Iowa license or permit,
14 if any, and issue a temporary license valid only for twenty
15 ten days. The peace officer shall immediately send the
16 person's driver's license to the department along with the
17 officer's certificate indicating that the test results
18 indicated an alcohol concentration of .10 or more.

19 5. The results of a chemical test may not be used as the
20 basis for a revocation of a person's motor vehicle license or
21 nonresident operating privilege if the alcohol concentration
22 indicated by the chemical test minus the established margin of
23 error inherent in the device or method used to conduct the
24 chemical test does not equal an alcohol concentration of .10
25 or more.

26 Sec. 6. Section 321J.13, subsections 1, 2, and 3, Code
27 1993, are amended to read as follows:

28 1. Notice of revocation of a person's motor vehicle
29 license or operating privilege served pursuant to section
30 321J.9 or 321J.12 shall include a form accompanied by a
31 preaddressed envelope on which the person served may indicate
32 by a checkmark if the person only wishes to request a
33 temporary restricted license only after the mandatory
34 ineligibility period for issuance of a temporary restricted
35 license has ended, or if the person wishes a hearing to

1 contest the revocation. The form shall clearly state on its
2 face that the form must be completed and returned within
3 thirty ten days of receipt or the person's right to a hearing
4 to contest the revocation is foreclosed. The form shall also
5 be accompanied by a statement of the operation of and the
6 person's rights under this chapter.

7 2. The department shall grant the person an opportunity to
8 be heard within forty-five days of receipt of a request for a
9 hearing if the request is made not later than thirty ten days
10 after receipt of notice of revocation served pursuant to
11 section 321J.9 or 321J.12. The hearing shall be before the
12 department in the county where the alleged events occurred,
13 unless the director and the person agree that the hearing may
14 be held in some other county, or the hearing may be held by
15 telephone conference at the discretion of the agency
16 conducting the hearing. The hearing may be recorded and its
17 scope shall be limited to the issues of whether a peace
18 officer had reasonable grounds to believe that the person was
19 operating a motor vehicle in violation of section 321J.2 and
20 either of the following:

21 a. Whether the person refused to submit to the test or
22 tests.

23 b. Whether a test was administered and the test results
24 indicated an alcohol concentration as defined in section
25 321J.1 of .10 or more.

26 3. After the hearing the department shall order that the
27 revocation be either rescinded or sustained. ~~If the~~
28 ~~revocation is sustained, the administrative law judge who~~
29 ~~conducted the hearing may issue a temporary restricted license~~
30 ~~to the person whose motor vehicle license or operating~~
31 ~~privilege was revoked.~~ Upon receipt of the decision of the
32 department to sustain a revocation, the person contesting the
33 revocation has ten days to file a request for review of the
34 decision by the director. The director or the director's
35 designee shall review the decision within fifteen days and

1 shall either rescind or sustain the revocation or order a new
2 hearing. If the director orders a new hearing, the department
3 shall grant the person a new hearing within thirty twenty days
4 of the director's order.

5 Sec. 7. Section 321J.20, subsection 1, Code 1993, is
6 amended to read as follows:

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

23 a. The person's motor vehicle license is revoked under
24 section 321J.4, subsection 1, 2, 4, or 6, and the minimum
25 period of ineligibility for issuance of a temporary restricted
26 license has expired.

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 guilty
32 plea is not withdrawn at the time of or after application for
33 the temporary restricted license, and the minimum period of
34 ineligibility for issuance of a temporary restricted license
35 has expired.

1 c. The person's motor vehicle license is revoked under
2 section 321J.12, and the minimum period of ineligibility for
3 issuance of a temporary restricted license has expired.

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

9 EXPLANATION

10 The bill is intended to comply with federal section 410
11 criteria established for states with comprehensive drunk
12 driving prevention programs. Federal section 410 criteria
13 require the establishment of periods of "hard" revocation and
14 the completion of the license revocation hearing process
15 within an abbreviated period of time. States meeting such
16 criteria, as determined by national highway traffic safety
17 administration (NHTSA), are eligible to receive grant funds
18 (65 percent of current 402 moneys) to enhance their drunk
19 driving prevention programs.

20 The bill establishes minimum periods of "hard" suspension
21 (no driving privileges) for persons driving while intoxicated.

22 Minimum revocation periods of 30 days are established if
23 the person submitted to and failed a chemical test resulting
24 in an indication of an alcohol concentration of .10 or more,
25 90 days if the person refuses to submit to a chemical test,
26 and one year for a person who had had one or more previous
27 revocations under chapter 321J within the previous six years.

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

33 The bill further provides for a reduction of the effective
34 date of revocation from 20 to 10 days and requires that a
35 request for hearing must be completed and returned to the

1 department within 10 days (currently 30) upon receipt of
2 notice of revocation. The bill also reduces the time within
3 which a new hearing after a hearing result is contested.

4 Under the bill persons subject to judicial, as well as
5 administrative, revocation are subject to "hard" suspension
6 provisions.

7 The bill provides that if a person is acquitted of
8 operating while intoxicated, the person's license or operating
9 privileges are not to be revoked under the implied consent
10 provisions and if they already have been revoked under the
11 implied consent provisions, the department is to restore the
12 person's license or operating privileges and the person's
13 license plates and registration are to be returned.

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SENATE FILE 388

S-3408

1 Amend Senate File 388 as follows:

2 1. Page 1, line 2, by inserting after the figure
3 "5," the following: "7,".

4 2. Page 3, by inserting after line 18 the
5 following:

6 "7. On a conviction for or as a condition of a
7 deferred judgment for a violation of section 321J.2,
8 the court may order the defendant to install ignition
9 interlock devices of a type approved by the
10 commissioner of public safety on ~~all~~ specified motor
11 vehicles owned or operated by the defendant which,
12 without tampering or the intervention of another
13 person, would prevent the defendant from operating the
14 motor vehicle with an alcohol concentration greater
15 than a level set by rule of the commissioner of public
16 safety. The commissioner of public safety shall adopt
17 rules to approve certain ignition interlock devices
18 and the means of installation of the devices, and
19 shall establish the level of alcohol concentration
20 beyond which an ignition interlock device will not
21 allow operation of the motor vehicle in which it is
22 installed. The commissioner shall also adopt rules
23 which provide alternate means of insuring that a
24 defendant does not operate motor vehicles with an
25 alcohol concentration greater than the level set by
26 rule by the commissioner, when the motor vehicle that
27 is to be operated is not owned by the defendant and
28 installation of the ignition interlock device is
29 impractical for the owner of the vehicle. The order
30 shall remain in effect for a period of time as
31 determined by the court which shall not exceed the
32 maximum term of imprisonment which the court could
33 have imposed according to the nature of the violation.
34 While the order is in effect, the defendant shall not
35 operate a motor vehicle which does not have an
36 approved ignition interlock device installed. If the
37 defendant's motor vehicle license or nonresident
38 operating privilege has been revoked, the department
39 shall not issue a temporary permit or a motor vehicle
40 license to the person without certification that
41 approved ignition interlock devices have been
42 installed in all motor vehicles owned or operated by
43 the defendant while the order is in effect. A
44 defendant who fails within a reasonable time to comply
45 with an order to install an approved ignition
46 interlock device may be declared in contempt of court
47 and punished accordingly. A person who tampers with
48 or circumvents an ignition interlock device installed
49 under a court order while an order is in effect
50 commits a serious misdemeanor."

S-3408

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S-3408

Page 2

1 2. By renumbering as necessary.

By JIM KERSTEN

SENATE FILE 388

S-3382

- 1 Amend Senate File 388 as follows:
- 2 1. By striking page 4, line 26 through page 5,
- 3 line 5.
- 4 2. By renumbering as necessary.

By LINN FUHRMAN
JEAN LLOYD-JONES

RICHARD F. DRAKE
ANDY McKEAN

S-3382 FILED APRIL 5, 1993

SENATE FILE 388

S-3407

- 1 Amend Senate File 388 as follows:
- 2 1. By striking page 4, line 26, through page 5,
- 3 line 5.
- 4 2. Page 8, by inserting after line 25 the fol-
- 5 lowing:
- 6 "6. The results of a chemical test may not be used
- 7 as the basis for a revocation of a person's motor
- 8 vehicle license or nonresident operating privilege if
- 9 the person is acquitted of the violation of section
- 10 321J.2, the test results notwithstanding. The court,
- 11 upon entry of a judgment of acquittal for a violation
- 12 of section 321J.2 shall forward a copy of the judgment
- 13 to the department and, if the person's license or
- 14 operating privileges are revoked under this section,
- 15 the license or privileges shall be restored and the
- 16 person's motor vehicle registration and license plate
- 17 shall be returned."
- 18 3. By renumbering as necessary.

By LINN FUHRMAN

S-3407 FILED APRIL 5, 1993

SENATE FILE 388

S-3423

- 1 Amend Senate File 388 as follows:
- 2 1. Page 4, line 28, by striking the word and
- 3 figure "sections 321J.9 and" and inserting the
- 4 following: "section".
- 5 2. Page 4, by striking lines 31 and 32 and
- 6 inserting the following: "operating privileges shall
- 7 not be revoked under section 321J.12. If the person's
- 8 motor".
- 9 3. Page 4, line 34, by striking the word and
- 10 figure "321J.9 or".

By ANDY McKEAN

S-3423 FILED APRIL 7, 1993

GETTINGS, CT.
CONNOLLY
DRAKE

SSB 186
TRANSPORTATION

SENATE FILE 388
BY (PROPOSED COMMITTEE ON
TRANSPORTATION BILL BY
CHAIRPERSON LLOYD-JONES)

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

A BILL FOR

1 An Act relating to the offense of operating while intoxicated,
2 providing for minimum hours of community service for certain
3 offenders, minimum periods of license revocation, and other
4 related matters.

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

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1 Section 1. Section 321J.4, subsections 1 and 2, subsection
2 3, paragraph a, and subsections 4, 5, and 8, Code 1993, are
3 amended to read as follows:

4 1. If a defendant is convicted of a violation of section
5 321J.2 and the defendant's motor vehicle license or
6 nonresident operating privilege has not been revoked under
7 section 321J.9 or 321J.12 for the occurrence from which the
8 arrest arose, the department shall revoke the defendant's
9 motor vehicle license or nonresident operating privilege for
10 one hundred eighty days if the defendant has had no previous
11 conviction ~~under section 321J.2~~ or revocation under section
12 ~~321J.9 or 321J.12~~ this chapter within the previous six years
13 and the defendant shall not be eligible for any temporary
14 restricted license for at least thirty days after the
15 effective date of the revocation if a test was obtained, and
16 for at least ninety days if a test was refused.

17 If a defendant is convicted of a violation of section
18 321J.2, and the defendant's motor vehicle license or
19 nonresident operating privilege has not already been revoked
20 under section 321J.9 or 321J.12 for the occurrence from which
21 the arrest arose, the department shall revoke the defendant's
22 motor vehicle license or nonresident operating privilege for
23 one year if the defendant has had one or more previous
24 convictions or revocations under those sections this chapter
25 within the previous six years. The defendant shall not be
26 eligible for any temporary restricted license during the
27 entire one year revocation period.

28 2. If the court defers judgment pursuant to section 907.3
29 for a violation of section 321J.2, and if the defendant's
30 motor vehicle license or nonresident operating privilege has
31 not been revoked under section 321J.9 or 321J.12, or has not
32 otherwise been revoked for the occurrence from which the
33 arrest arose, the court shall order the department to revoke
34 the defendant's motor vehicle license or nonresident operating
35 privilege for a period of not less than thirty days nor more

1 than ninety days ~~if the defendant's motor vehicle license or~~
2 ~~nonresident operating privilege has not been revoked under~~
3 ~~section 321J.9 or 321J.12 or has not otherwise been revoked~~
4 ~~for the occurrence from which the arrest arose.~~ The defendant
5 shall not be eligible for any temporary restricted license for
6 at least thirty days after the effective date of the
7 revocation if a test was obtained and for at least ninety days
8 if a test was refused. The court shall immediately require
9 the defendant to surrender to it all Iowa licenses or permits
10 held by the defendant, which the court shall forward to the
11 department with a copy of the order deferring judgment.

12 a. Upon a plea or verdict of guilty of a third or
13 subsequent violation of section 321J.2, the court shall order
14 the department to revoke the defendant's motor vehicle license
15 or nonresident operating privilege for a period of six years.
16 The defendant shall not be eligible for a temporary restricted
17 license for at least one year after the effective date of the
18 revocation. The court shall require the defendant to
19 surrender to it all Iowa licenses or permits held by the
20 defendant, which the court shall forward to the department
21 with a copy of the order for revocation.

22 4. Upon a plea or verdict of guilty of a violation of
23 section 321J.2 which involved a personal injury, the court
24 shall determine in open court, from consideration of the
25 information in the file and any other evidence the parties may
26 submit, whether a serious injury was sustained by any person
27 other than the defendant and, if so, whether the defendant's
28 conduct in violation of section 321J.2 caused the serious
29 injury. If the court so determines, the court shall order the
30 department to revoke the defendant's motor vehicle license or
31 nonresident operating privilege for a period of one year in
32 addition to any other period of suspension or revocation. The
33 defendant shall not be eligible for any temporary restricted
34 license until the minimum period of ineligibility has expired
35 under section 321J.4, 321J.9, 321J.12, or 321J.20. The

1 defendant shall surrender to the court any Iowa license or
2 permit and the court shall forward it to the department with a
3 copy of the order for revocation.

4 5. Upon a plea or verdict of guilty of a violation of
5 section 321J.2 which involved a death, the court shall
6 determine in open court, from consideration of the information
7 in the file and any other evidence the parties may submit,
8 whether a death occurred and, if so, whether the defendant's
9 conduct in violation of section 321J.2 caused the death. If
10 the court so determines, the court shall order the department
11 to revoke the defendant's motor vehicle license or nonresident
12 operating privilege for a period of six years. The defendant
13 shall not be eligible for any temporary restricted license
14 until the minimum period of ineligibility has expired under
15 section 321J.4, 321J.9, 321J.12, or 321J.20. The defendant
16 shall surrender to the court any Iowa license or permit and
17 the court shall forward it to the department with a copy of
18 the order for revocation.

19 8. A person whose motor vehicle license has either been
20 revoked under this chapter, or revoked or suspended under
21 chapter 321 solely for violations of this chapter, or who has
22 been determined to be a habitual offender under chapter 321
23 based solely on violations of this chapter, and who is not
24 eligible for a temporary restricted license under this chapter
25 may petition the court upon the expiration of the minimum
26 period of ineligibility for a temporary restricted license
27 provided for under section 321J.4, 321J.9, 321J.12, or 321J.20
28 for an order to the department to require the department to
29 issue a temporary restricted license to the person
30 notwithstanding section 321.560. Upon the filing of a
31 petition for a temporary restricted license under this
32 section, the clerk of the district court in the county where
33 the violation that resulted in the revocation occurred shall
34 send notice of the petition to the department and the
35 prosecuting attorney. The department and the prosecuting

1 attorney shall each be given an opportunity to respond to and
2 request a hearing on the petition. The court shall determine
3 if the temporary restricted license is necessary for the
4 person to maintain the person's present employment. If the
5 court determines that the temporary restricted license is
6 necessary for the person to maintain the person's present
7 employment, and that the minimum period of ineligibility for
8 receipt of a temporary license has expired, the court shall
9 order the department to issue to the person a temporary
10 restricted license conditioned upon the person's certification
11 to the court of the installation of approved ignition
12 interlock devices in all motor vehicles that it is necessary
13 for the person to operate to maintain the person's present
14 employment. Section 321.561 does not apply to a person
15 operating a motor vehicle in the manner permitted under this
16 subsection. If the person operates a motor vehicle which does
17 not have an approved ignition interlock device or if the
18 person tampers with or circumvents an ignition interlock
19 device, in addition to other penalties provided, the person's
20 temporary restricted license shall be revoked. A person
21 holding a temporary restricted license issued under this
22 subsection shall not operate a commercial motor vehicle, as
23 defined in section 321.1, on a highway if a commercial
24 driver's license is required for the person to operate the
25 commercial motor vehicle.

26 Sec. 2. Section 321J.8, Code 1993, is amended to read as
27 follows:

28 321J.8 STATEMENT OF OFFICER.

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

31 1. If the person refuses to submit to the test, the
32 person's motor vehicle license or nonresident operating
33 privilege will be revoked by the department as required by and
34 for the applicable period specified under section 321J.9.

35 2. If the person submits to the test and the results

S.F. _____ H.F. _____

1 indicate an alcohol concentration as defined in section 321J.1
2 of .10 or more, the person's motor vehicle license or
3 nonresident operating privilege will be revoked by the
4 department as required by and for the applicable period
5 specified under section 321J.12.

6 3. If the person is operating a commercial motor vehicle
7 as defined in section 321.1 and either refuses to submit to
8 the test or submits to the test and the results indicate an
9 alcohol concentration of 0.04 or more, the person is
10 disqualified from operating a commercial motor vehicle for the
11 applicable period under section 321.208 in addition to any
12 revocation of the person's motor vehicle license or
13 nonresident operating privilege which may be applicable under
14 this chapter.

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

17 Sec. 3. Section 321J.9, Code 1993, is amended to read as
18 follows:

19 321J.9 REFUSAL TO SUBMIT -- REVOCATION.

20 1. If a person refuses to submit to the chemical testing,
21 a test shall not be given, but the department, upon the
22 receipt of the peace officer's certification, subject to
23 penalty for perjury, that the officer had reasonable grounds
24 to believe the person to have been operating a motor vehicle
25 in violation of section 321J.2, that specified conditions
26 existed for chemical testing pursuant to section 321J.6, and
27 that the person refused to submit to the chemical testing,
28 shall revoke the person's motor vehicle license and any
29 nonresident operating privilege for ~~a-period~~ the following
30 periods of two time:

31 a. Two hundred forty days if the person has no previous
32 revocation within the previous six years under this chapter;
33 and ~~five~~

34 b. Five hundred forty days if the person has one or more
35 previous revocations within the previous six years under this

1 chapter, ~~or if~~.

2 2. A person whose motor vehicle license or nonresident
3 operating privileges are revoked for two hundred forty days
4 under subsection 1, paragraph "a", shall not be eligible for a
5 temporary restricted license for at least ninety days after
6 the effective date of the revocation. A person whose motor
7 vehicle license or nonresident operating privileges are
8 revoked for five hundred forty days under subsection 1,
9 paragraph "b", shall not be eligible for a temporary
10 restricted license for at least one year after the effective
11 date of the revocation.

12 3. If the person is a resident without a license or permit
13 to operate a motor vehicle in this state, the department shall
14 deny to the person the issuance of a license or permit for the
15 same period a license or permit would be revoked, and deny
16 issuance of a temporary restricted license for the same period
17 of ineligibility for receipt of a temporary restricted
18 license, subject to review as provided in this chapter. The
19 effective date of revocation shall be twenty ten days after
20 the department has mailed notice of revocation to the person
21 by certified mail or, on behalf of the department, a peace
22 officer offering or directing the administration of a chemical
23 test may serve immediate notice of intention to revoke and of
24 revocation on a person who refuses to permit chemical testing.
25 If the peace officer serves that immediate notice, the peace
26 officer shall take the Iowa license or permit of the driver,
27 if any, and issue a temporary license effective for only
28 twenty ten days. The peace officer shall immediately send the
29 person's license to the department along with the officer's
30 certificate indicating the person's refusal to submit to
31 chemical testing.

32 Sec. 4. Section 321J.12, Code 1993, is amended to read as
33 follows:

34 321J.12 TEST RESULT REVOCATION.

35 1. Upon certification, subject to penalty for perjury, by

1 the peace officer that there existed reasonable grounds to
2 believe that the person had been operating a motor vehicle in
3 violation of section 321J.2, that there existed one or more of
4 the necessary conditions for chemical testing described in
5 section 321J.6, subsection 1, and that the person submitted to
6 chemical testing and the test results indicated an alcohol
7 concentration as defined in section 321J.1 of .10 or more, the
8 department shall revoke the person's motor vehicle license or
9 nonresident operating privilege for a-period the following
10 periods of one time:

11 a. One hundred eighty days if the person has had no
12 revocation within the previous six years under this chapter.
13 and-one

14 b. One year if the person has had one or more previous
15 revocations within the previous six years under this chapter.

16 2. A person whose motor vehicle license or nonresident
17 operating privileges have been revoked under subsection 1,
18 paragraph "a", shall not be eligible for any temporary
19 restricted license for at least thirty days after the
20 effective date of the revocation. A person whose license or
21 privileges have been revoked under subsection 1, paragraph
22 "b", for one year shall not be eligible for any temporary
23 restricted license for one year after the effective date of
24 the revocation.

25 3. The effective date of the revocation shall be twenty
26 ten days after the department has mailed notice of revocation
27 to the person by certified mail. The peace officer who
28 requested or directed the administration of the chemical test
29 may, on behalf of the department, serve immediate notice of
30 revocation on a person whose test results indicated an alcohol
31 concentration of .10 or more.

32 4. If the peace officer serves that immediate notice, the
33 peace officer shall take the person's Iowa license or permit,
34 if any, and issue a temporary license valid only for twenty
35 ten days. The peace officer shall immediately send the

1 person's driver's license to the department along with the
2 officer's certificate indicating that the test results
3 indicated an alcohol concentration of .10 or more.

4 5. The results of a chemical test may not be used as the
5 basis for a revocation of a person's motor vehicle license or
6 nonresident operating privilege if the alcohol concentration
7 indicated by the chemical test minus the established margin of
8 error inherent in the device or method used to conduct the
9 chemical test does not equal an alcohol concentration of .10
10 or more.

11 Sec. 5. Section 321J.13, subsections 1, 2, and 3, Code
12 1993, are amended to read as follows:

13 1. Notice of revocation of a person's motor vehicle
14 license or operating privilege served pursuant to section
15 321J.9 or 321J.12 shall include a form accompanied by a
16 preaddressed envelope on which the person served may indicate
17 by a checkmark if the person only wishes to request a
18 temporary restricted license only after the mandatory
19 ineligibility period for issuance of a temporary restricted
20 license has ended, or if the person wishes a hearing to
21 contest the revocation. The form shall clearly state on its
22 face that the form must be completed and returned within
23 thirty ten days of receipt or the person's right to a hearing
24 to contest the revocation is foreclosed. The form shall also
25 be accompanied by a statement of the operation of and the
26 person's rights under this chapter.

27 2. The department shall grant the person an opportunity to
28 be heard within forty-five days of receipt of a request for a
29 hearing if the request is made not later than thirty ten days
30 after receipt of notice of revocation served pursuant to
31 section 321J.9 or 321J.12. The hearing shall be before the
32 department in the county where the alleged events occurred,
33 unless the director and the person agree that the hearing may
34 be held in some other county, or the hearing may be held by
35 telephone conference at the discretion of the agency

1 conducting the hearing. The hearing may be recorded and its
2 scope shall be limited to the issues of whether a peace
3 officer had reasonable grounds to believe that the person was
4 operating a motor vehicle in violation of section 321J.2 and
5 either of the following:

6 a. Whether the person refused to submit to the test or
7 tests.

8 b. Whether a test was administered and the test results
9 indicated an alcohol concentration as defined in section
10 321J.1 of .10 or more.

11 3. After the hearing the department shall order that the
12 revocation be either rescinded or sustained. ~~If the~~
13 ~~revocation is sustained, the administrative law judge who~~
14 ~~conducted the hearing may issue a temporary restricted license~~
15 ~~to the person whose motor vehicle license or operating~~
16 ~~privilege was revoked.~~ Upon receipt of the decision of the
17 department to sustain a revocation, the person contesting the
18 revocation has ten days to file a request for review of the
19 decision by the director. The director or the director's
20 designee shall review the decision within fifteen days and
21 shall either rescind or sustain the revocation or order a new
22 hearing. If the director orders a new hearing, the department
23 shall grant the person a new hearing within thirty twenty days
24 of the director's order.

25 Sec. 6. Section 321J.20, subsection 1, Code 1993, is
26 amended to read as follows:

27 1. The department may, on application, issue a temporary
28 restricted license to a person whose motor vehicle license is
29 revoked under this chapter allowing the person to drive to and
30 from the person's home and specified places at specified times
31 which can be verified by the department and which are required
32 by the person's full-time or part-time employment, continuing
33 health care or the continuing health care of another who is
34 dependent upon the person, continuing education while enrolled
35 in an educational institution on a part-time or full-time

1 basis and while pursuing a course of study leading to a
2 diploma, degree, or other certification of successful
3 educational completion, substance abuse treatment, and court-
4 ordered community service responsibilities if the person's
5 motor vehicle license has not been revoked under section
6 321J.4, 321J.9, or 321J.12 within the previous six years and
7 if any of the following apply:

8 a. The person's motor vehicle license is revoked under
9 section 321J.4, subsection 1, 2, 4, or 6, and the minimum
10 period of ineligibility for issuance of a temporary restricted
11 license has expired.

12 b. The person's motor vehicle license is revoked under
13 section 321J.9 and the person has entered a plea of guilty on
14 a charge of a violation of section 321J.2 which arose from the
15 same set of circumstances which resulted in the person's motor
16 vehicle license revocation under section 321J.9 and the guilty
17 plea is not withdrawn at the time of or after application for
18 the temporary restricted license, and the minimum period of
19 ineligibility for issuance of a temporary restricted license
20 has expired.

21 c. The person's motor vehicle license is revoked under
22 section 321J.12, and the minimum period of ineligibility for
23 issuance of a temporary restricted license has expired.

24 However, a temporary restricted license may be issued if
25 the person's motor vehicle license is revoked under section
26 321J.9, and the revocation is a second revocation under this
27 chapter, and the first three hundred and ~~sixty~~ sixty-five days
28 of the revocation have expired.

29 EXPLANATION

30 The bill is intended to comply with federal section 410
31 criteria established for states with comprehensive drunk
32 driving prevention programs. Federal section 410 criteria
33 require the establishment of periods of "hard" revocation and
34 the completion of the license revocation hearing process
35 within an abbreviated period of time. States meeting such

1 criteria, as determined by national highway traffic safety
2 administration (NHTSA), are eligible to receive grant funds
3 (65 percent of current 402 moneys) to enhance their drunk
4 driving prevention programs.

5 The bill establishes minimum periods of "hard" suspension
6 (no driving privileges) for persons driving while intoxicated.

7 Minimum revocation periods of 30 days are established if
8 the person submitted to and failed a chemical test resulting
9 in an indication of an alcohol concentration of .10 or more,
10 90 days if the person refuses to submit to a chemical test,
11 and one year for a person who had had one or more previous
12 revocations under chapter 321J within the previous six years.

13 This bill requires that the local prosecuting attorney and
14 the state department of transportation be given notice by the
15 clerk of the district court of, and the opportunity to request
16 a hearing on, a petition for a temporary restricted license
17 pursuant to section 321J.4.

18 The bill further provides for a reduction of the effective
19 date of revocation from 20 to 10 days and requires that a
20 request for hearing must be completed and returned to the
21 department within 10 days (currently 30) upon receipt of
22 notice of revocation. The bill also reduces the time within
23 which a new hearing after a hearing result is contested.

24 Under the bill persons subject to judicial, as well as
25 administrative, revocation are subject to "hard" suspension
26 provisions.

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