

Reprinted

FILED MAR 20 1995

SENATE FILE 446
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 243)

Passed Senate, ^(p.872) Date 3-27-95 Passed House, Date 4/12/95
Vote: Ayes 49 Nays 0 Vote: Ayes 13 Nays 0
Approved April 20, 1994

A BILL FOR

1 An Act relating to the possession or use of alcohol while
2 operating a motor vehicle by requiring the administrative
3 revocation of driving privileges of persons under the age of
4 twenty-one who operate a motor vehicle with an alcohol
5 concentration of .02 or more, denying issuance of temporary
6 restricted licenses during the period of revocation, including
7 the revocation under implied consent provisions, providing for
8 civil penalties, excluding the revocation from application of
9 certain motor vehicle financial responsibility requirements,
10 providing for minimum periods of license revocation, providing
11 a scheduled fine for possession of an open alcohol container
12 while operating a motor vehicle, providing for the impoundment
13 or immobilization of motor vehicles driven or owned by persons
14 convicted of operating while intoxicated and being a second or
15 subsequent offender, providing criminal penalties, and other
16 related matters.

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

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S.F. 446

1 Section 1. Section 123.28, unnumbered paragraph 2, Code
2 1995, is amended by striking the unnumbered paragraph.

3 Sec. 2. Section 321.12, Code 1995, is amended by adding
4 the following new unnumbered paragraph:

5 NEW UNNUMBERED PARAGRAPH. The director shall destroy any
6 operating records pertaining to revocations for violations of
7 section 321J.2A which are more than twelve years old. The
8 twelve-year period shall commence with the date the revocation
9 of the person's operating privileges becomes effective. This
10 paragraph shall not apply to records of revocations which
11 pertain to violations of section 321J.2A by persons operating
12 a commercial motor vehicle.

13 Sec. 3. Section 321.218, subsection 1, Code 1995, is
14 amended to read as follows:

15 1. A person whose motor vehicle license or operating
16 privilege has been denied, canceled, suspended, or revoked as
17 provided in this chapter, and who operates a motor vehicle
18 upon the highways of this state while the license or privilege
19 is denied, canceled, suspended, or revoked, commits a ~~simple~~
20 serious misdemeanor.

21 Sec. 4. NEW SECTION. 321.284 OPEN CONTAINERS IN MOTOR
22 VEHICLES.

23 A person driving a motor vehicle shall not knowingly
24 possess in a motor vehicle upon a public street or highway an
25 open or unsealed bottle, can, jar, or other receptacle
26 containing an alcoholic beverage, wine, or beer with the
27 intent to consume the alcoholic beverage, wine, or beer while
28 the motor vehicle is upon a public street or highway.

29 Evidence that an open or unsealed receptacle containing an
30 alcoholic beverage, wine, or beer was found during an
31 authorized search in the glove compartment, utility
32 compartment, console, front passenger seat, or any unlocked
33 portable device and within the immediate reach of the driver
34 while the motor vehicle is upon a public street or highway is
35 evidence from which the court or jury may infer that the

1 driver intended to consume the alcoholic beverage, wine, or
2 beer while upon the public street or highway if the inference
3 is supported by corroborative evidence. However, an open or
4 unsealed receptacle containing an alcoholic beverage, wine, or
5 beer may be transported at any time in the trunk of the motor
6 vehicle or in some other area of the interior of the motor
7 vehicle not designed or intended to be occupied by the driver
8 and not readily accessible to the driver while the motor
9 vehicle is in motion. A person convicted of a violation of
10 this paragraph is guilty of a simple misdemeanor punishable as
11 a scheduled violation under section 805.8, subsection 10,
12 paragraph "c".

13 Sec. 5. Section 321A.17, subsection 5, Code 1995, is
14 amended to read as follows:

15 5. An individual applying for a motor vehicle license
16 following a period of suspension or revocation under section
17 321.209, subsection 8, section 321.210, subsection 1,
18 paragraph "d", or section 321.210A, 321.213B, 321.216B, or
19 321.513, ~~or~~ following a period of suspension under section
20 321.194, or following a period of revocation under section
21 321J.2A, is not required to maintain proof of financial
22 responsibility under this section.

23 Sec. 6. NEW SECTION. 321J.2A PERSONS UNDER THE AGE OF
24 TWENTY-ONE.

25 A person who is under the age of twenty-one shall not
26 operate a motor vehicle while having an alcohol concentration,
27 as defined under section 321J.1, of .02 or more. The motor
28 vehicle license or nonresident operating privilege of a person
29 who is under the age of twenty-one and who operates a motor
30 vehicle while having an alcohol concentration of .02 or more
31 shall be revoked by the department for the period of time
32 specified under section 321J.12. A revocation under this
33 section shall not preclude a prosecution or conviction under
34 any applicable criminal provisions of this chapter. However,
35 if the person is convicted of a criminal offense under section

1 321J.2, the revocation imposed under this section shall be
2 superseded by any revocation imposed as a result of the
3 conviction.

4 In any proceeding regarding a revocation under this
5 section, evidence of the results of analysis of a specimen of
6 the defendant's blood, breath, or urine is admissible upon
7 proof of a proper foundation. The alcohol concentration
8 established by the results of an analysis of a specimen of the
9 defendant's blood, breath, or urine withdrawn within two hours
10 after the defendant was driving or in physical control of a
11 motor vehicle is presumed to be the alcohol concentration at
12 the time of driving or being in physical control of the motor
13 vehicle.

14 Sec. 7. Section 321J.4, subsections 1 and 2, Code 1995,
15 are amended to read as follows:

16 1. If a defendant is convicted of a violation of section
17 321J.2 and the defendant's motor vehicle license or
18 nonresident operating privilege has not been revoked under
19 section 321J.9 or 321J.12 for the occurrence from which the
20 arrest arose, the department shall revoke the defendant's
21 motor vehicle license or nonresident operating privilege for
22 one hundred eighty days if the defendant has had no previous
23 conviction ~~under section 321J.2~~ or revocation under section
24 ~~321J.9 or 321J.12~~ this chapter within the previous six years
25 and the defendant shall not be eligible for any temporary
26 restricted license for at least thirty days after the
27 effective date of the revocation if a test was obtained, and
28 for at least ninety days if a test was refused.

29 If a defendant is convicted of a violation of section
30 321J.2, and the defendant's motor vehicle license or
31 nonresident operating privilege has not already been revoked
32 under section 321J.9 or 321J.12 for the occurrence from which
33 the arrest arose, the department shall revoke the defendant's
34 motor vehicle license or nonresident operating privilege for
35 one year if the defendant has had one or more previous

1 convictions or revocations under these sections this chapter
2 within the previous six years. The defendant shall not be
3 eligible for any temporary restricted license during the
4 entire one year revocation period.

5 2. If the court defers judgment pursuant to section 907.3
6 for a violation of section 321J.2, and if the defendant's
7 motor vehicle license or nonresident operating privilege has
8 not been revoked under section 321J.9 or 321J.12, or has not
9 otherwise been revoked for the occurrence from which the
10 arrest arose, the court shall order the department to revoke
11 the defendant's motor vehicle license or nonresident operating
12 privilege for a period of not less than thirty days nor more
13 than ninety days if-the-defendant's-motor-vehicle-license-or
14 nonresident-operating-privilege-has-not-been-revoked-under
15 section-321J.9-or-321J.12-or-has-not-otherwise-been-revoked
16 for-the-occurrence-from-which-the-arrest-arose. The defendant
17 shall not be eligible for any temporary restricted license for
18 at least thirty days after the effective date of the
19 revocation if a test was obtained and for at least ninety days
20 if a test was refused. The court shall immediately require
21 the defendant to surrender to it all Iowa licenses or permits
22 held by the defendant, which the court shall forward to the
23 department with a copy of the order deferring judgment.

24 Sec. 8. Section 321J.4, subsection 3, paragraph a, Code
25 1995, is amended to read as follows:

26 a. Upon a plea or verdict of guilty of a third or
27 subsequent violation of section 321J.2, the court shall order
28 the department to revoke the defendant's motor vehicle license
29 or nonresident operating privilege for a period of six years.
30 The defendant shall not be eligible for a temporary restricted
31 license for at least one year after the effective date of the
32 revocation. The court shall require the defendant to
33 surrender to it all Iowa licenses or permits held by the
34 defendant, which the court shall forward to the department
35 with a copy of the order for revocation.

1 Sec. 9. Section 321J.4, subsections 4, 5, and 8, Code
2 1995, are amended to read as follows:

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

20 5. Upon a plea or verdict of guilty of a violation of
21 section 321J.2 which involved a death, the court shall
22 determine in open court, from consideration of the information
23 in the file and any other evidence the parties may submit,
24 whether a death occurred and, if so, whether the defendant's
25 conduct in violation of section 321J.2 caused the death. If
26 the court so determines, the court shall order the department
27 to revoke the defendant's motor vehicle license or nonresident
28 operating privilege for a period of six years. The defendant
29 shall not be eligible for any temporary restricted license
30 until the minimum period of ineligibility has expired under
31 section 321J.4, 321J.9, 321J.12, or 321J.20. The defendant
32 shall surrender to the court any Iowa license or permit and
33 the court shall forward it to the department with a copy of
34 the order for revocation.

35 8. A person whose motor vehicle license has either been

1 revoked under this chapter, or revoked or suspended under
2 chapter 321 solely for violations of this chapter, or who has
3 been determined to be a habitual offender under chapter 321
4 based solely on violations of this chapter, and who is not
5 eligible for a temporary restricted license under this chapter
6 may petition the court upon the expiration of the minimum
7 period of ineligibility for a temporary restricted license
8 provided for under section 321J.4, 321J.9, 321J.12, or 321J.20
9 for an order to the department to require the department to
10 issue a temporary restricted license to the person
11 notwithstanding section 321.560. Upon the filing of a
12 petition for a temporary restricted license under this
13 section, the clerk of the district court in the county where
14 the violation that resulted in the revocation occurred shall
15 send notice of the petition to the department and the
16 prosecuting attorney. The department and the prosecuting
17 attorney shall each be given an opportunity to respond to and
18 request a hearing on the petition. The court shall determine
19 if the temporary restricted license is necessary for the
20 person to maintain the person's present employment. However,
21 a temporary restricted license shall not be ordered or issued
22 for violations of section 321J.2A or to persons under the age
23 of twenty-one who commit violations under section 321J.2. If
24 the court determines that the temporary restricted license is
25 necessary for the person to maintain the person's present
26 employment, and that the minimum period of ineligibility for
27 receipt of a temporary license has expired, the court shall
28 order the department to issue to the person a temporary
29 restricted license conditioned upon the person's certification
30 to the court of the installation of approved ignition
31 interlock devices in all motor vehicles that it is necessary
32 for the person to operate to maintain the person's present
33 employment. Section 321.561 does not apply to a person
34 operating a motor vehicle in the manner permitted under this
35 subsection. If the person operates a motor vehicle which does

1 not have an approved ignition interlock device or if the
2 person tampers with or circumvents an ignition interlock
3 device, in addition to other penalties provided, the person's
4 temporary restricted license shall be revoked. A person
5 holding a temporary restricted license issued under this
6 subsection shall not operate a commercial motor vehicle, as
7 defined in section 321.1, on a highway if a commercial
8 driver's license is required for the person to operate the
9 commercial motor vehicle.

10 Sec. 10. NEW SECTION. 321J.4B MOTOR VEHICLE IMPOUNDMENT
11 OR IMMOBILIZATION -- PENALTY.

12 1. If a person is convicted of a second, third, or
13 subsequent offense of operating while intoxicated, the court
14 may order that any motor vehicles owned by the person and any
15 motor vehicles operated by the person be impounded or
16 immobilized.

17 2. The order shall specify all of the following:

18 a. The motor vehicles that are subject to the order.

19 b. The period of impoundment or immobilization.

20 c. The person or agency responsible for carrying out the
21 order requiring impoundment or immobilization of the motor
22 vehicle. If a vehicle which is to be impounded or immobilized
23 is in the custody of a law enforcement agency, the court shall
24 designate that agency as the responsible agency. If the
25 vehicle is not in the custody of a law enforcement agency, the
26 person or agency responsible for carrying out the order shall
27 be any person deemed appropriate by the court, including but
28 not limited to a law enforcement agency with jurisdiction over
29 the area in which the residence of the vehicle owner is
30 located. The person or agency responsible for carrying out
31 the order shall determine whether the motor vehicle shall be
32 impounded or immobilized.

33 3. The period of impoundment or immobilization of a motor
34 vehicle under this section shall be the period of license
35 revocation imposed upon the person convicted of the offense or

1 one hundred eighty days, whichever period is longer. The
2 impoundment or immobilization period shall commence on the day
3 that the vehicle is actually impounded or immobilized.

4 4. The clerk of the district court shall send a copy of
5 the order to the department, the person convicted of the
6 offense, the motor vehicle owner if the owner is not the
7 person convicted, and the person or agency responsible for
8 executing the order for impoundment or immobilization.

9 5. If the vehicle to be impounded or immobilized is in the
10 custody of a law enforcement agency, the agency shall
11 immobilize or impound the vehicle upon receipt of the order,
12 seize the motor vehicle's license plates and registration, and
13 shall send or deliver the vehicle's license plates and
14 registration to the department.

15 6. If the vehicle to be impounded or immobilized is not in
16 the custody of a law enforcement agency, the person or agency
17 designated in the order as the person or agency responsible
18 for executing the order shall, upon receipt of the order,
19 promptly locate the vehicle specified in the order, seize the
20 motor vehicle and the license plates, and send or deliver the
21 vehicle's license plates to the department.

22 7. If the vehicle is located at a place other than the
23 place at which the impoundment or immobilization is to be
24 carried out, the person or agency responsible for executing
25 the order shall arrange for the vehicle to be moved to the
26 place of impoundment or immobilization. When the vehicle is
27 found, is impounded or immobilized, and is at the place of
28 impoundment or immobilization, the person or agency
29 responsible for executing the order shall notify the clerk of
30 the date on which the order was executed. The clerk shall
31 notify the department of the date on which the order was
32 executed.

33 8. The department shall destroy license plates received
34 under this section and shall not authorize the release of the
35 vehicle or the issuance of new license plates for the vehicle

1 until the period of impoundment or immobilization has expired,
2 and the fee and costs assessed under subsection 9 have been
3 paid. The fee for issuance of new license plates and
4 certificates of registration shall be the same as for the
5 replacement of lost, mutilated, or destroyed license plates
6 and certificates of registration.

7 9. Except where the person who is convicted of operating
8 while intoxicated and being a second or subsequent offender is
9 not lawfully in possession of the motor vehicle, the owner of
10 any motor vehicle that is impounded or immobilized under this
11 section shall be assessed a fee of one hundred dollars plus
12 the cost of any expenses for towing, storage, and any other
13 costs of impounding or immobilizing the motor vehicle, to be
14 paid to the clerk of the district court. The person or agency
15 responsible for carrying out the order shall inform the court
16 of the costs of towing, storage, and any other costs of
17 impounding or immobilizing the motor vehicle. Upon payment of
18 the fee and costs, the clerk shall forward a copy of the
19 receipt to the department.

20 10. If a law enforcement agency impounds or immobilizes a
21 motor vehicle, the amount of the fee and expenses deposited
22 with the clerk shall be paid by the clerk to the law
23 enforcement agency responsible for executing the order to
24 reimburse the agency for costs incurred for impoundment or
25 immobilization equipment and, if required, in sending officers
26 to search for and locate the vehicle specified in the
27 impoundment or immobilization order.

28 11. A motor vehicle which is subject to an order of
29 impoundment or immobilization that is operated on a street or
30 highway in this state during the period of impoundment or
31 immobilization shall be seized and forfeited to the state
32 under chapter 809.

33 12. Once the period of impoundment or immobilization has
34 expired, the owner of the motor vehicle shall have thirty days
35 to claim the motor vehicle and pay the fees and charges

1 imposed under this section. If the owner or the owner's
2 designee has not claimed the vehicle and paid the fees and
3 charges imposed under this section within seven days from the
4 date of expiration of the period, the clerk shall send written
5 notification to the motor vehicle owner, at the owner's last
6 known address, notifying the owner of the date of expiration
7 of the period of impoundment or immobilization and of the
8 period in which the motor vehicle must be claimed. If the
9 motor vehicle owner fails to claim the motor vehicle and pay
10 the fees and charges imposed within the thirty-day period, the
11 motor vehicle shall be forfeited to the state under chapter
12 809.

13 13. a. During the period of impoundment or
14 immobilization, a person convicted of the offense of operating
15 while intoxicated which resulted in the impoundment or
16 immobilization shall not sell or transfer the title of the
17 motor vehicle which is subject to the order of impoundment or
18 immobilization. The person convicted of the offense of
19 operating while intoxicated shall also not purchase another
20 motor vehicle or register any motor vehicle during the period
21 of impoundment or immobilization. Violation of this paragraph
22 is a serious misdemeanor.

23 b. If, during the period of impoundment or immobilization,
24 the title to the motor vehicle which is the subject of the
25 order is transferred by the foreclosure of a chattel mortgage,
26 a sale upon execution, the cancellation of a conditional sales
27 contract, or an order of a court, the court which enters the
28 order that permits transfer of the title shall notify the
29 department of the transfer of the title. The department shall
30 enter notice of the transfer of the title to the motor vehicle
31 in the previous owner's vehicle registration record.

32 14. Notwithstanding the requirements of this section, if
33 the owner of the motor vehicle is not the person who is
34 convicted of the offense which resulted in the issuance of the
35 order of impoundment or immobilization or the owner of the

1 motor vehicle is a motor vehicle rental or leasing company,
2 the owner, the owner's designee, or the rental or leasing
3 company shall be permitted to submit a claim for return of the
4 motor vehicle within twenty-four hours from receipt of the
5 order for impoundment or immobilization. Upon learning the
6 address or phone number of a rental or leasing company which
7 owns a motor vehicle, the peace officer, county attorney, or
8 attorney general shall immediately contact the company to
9 inform the company that the vehicle is available for return to
10 the company. The vehicle shall be returned to the owner,
11 owner's designee, or rental or leasing company and the order
12 for impoundment or immobilization shall be rescinded with
13 respect to the particular motor vehicle, if the owner or
14 owner's designee can prove to the satisfaction of the court
15 that the owner did not know or should not have known that the
16 vehicle was to be used in the commission of the offense of
17 operating while intoxicated, or if the rental or leasing
18 company did not know, should not have known, and did not
19 consent to the operation of the motor vehicle used in the
20 commission of the offense of operating while intoxicated. For
21 purposes of this section, unless the person convicted of the
22 offense which results in the imposition of the order for
23 impoundment or immobilization is not in lawful possession of
24 the motor vehicle used in the commission of the offense, an
25 owner of a motor vehicle shall be presumed to know that the
26 vehicle was to be used by the person who is convicted of the
27 offense, in the commission of the offense of operating while
28 intoxicated.

29 15. Notwithstanding the requirements of this section, the
30 holder of a security interest in a vehicle which is impounded
31 or immobilized pursuant to this section or forfeited in the
32 manner provided in chapter 809 shall be notified of the
33 impoundment, immobilization, or forfeiture within seventy-two
34 hours of the seizure of the vehicle and shall have the right
35 to claim the motor vehicle without payment of any fees or

1 surcharges unless the value of the vehicle exceeds the value
2 of the security interest held by the creditor.

3 16. The impoundment, immobilization, or forfeiture of a
4 motor vehicle under this chapter does not constitute loss of
5 use of a motor vehicle for purposes of any contract of
6 insurance.

7 Sec. 11. Section 321J.5, Code 1995, is amended to read as
8 follows:

9 321J.5 PRELIMINARY SCREENING TEST.

10 1. When a peace officer has reasonable grounds to believe
11 that a either of the following have occurred, the peace
12 officer may request that the operator provide a sample of the
13 operator's breath for a preliminary screening test using a
14 device approved by the commissioner of public safety for that
15 purpose:

16 a. A motor vehicle operator may be violating or has
17 violated section 321J.27 or the 321J.2A.

18 b. The operator has been involved in a motor vehicle
19 collision resulting in injury or death~~7-the-peace-officer-may~~
20 ~~request-the-operator-to-provide-a-sample-of-the-operator's~~
21 ~~breath-for-a-preliminary-screening-test-using-a-device~~
22 ~~approved-by-the-commissioner-of-public-safety-for-that~~
23 purpose.

24 2. The results of this preliminary screening test may be
25 used for the purpose of deciding whether an arrest should be
26 made and or whether to request a chemical test authorized in
27 this chapter, but shall not be used in any court action except
28 to prove that a chemical test was properly requested of a
29 person pursuant to this chapter.

30 Sec. 12. Section 321J.6, subsection 1, unnumbered
31 paragraph 1, Code 1995, is amended to read as follows:

32 A person who operates a motor vehicle in this state under
33 circumstances which give reasonable grounds to believe that
34 the person has been operating a motor vehicle in violation of
35 section 321J.2 or 321J.2A is deemed to have given consent to

1 the withdrawal of specimens of the person's blood, breath, or
2 urine and to a chemical test or tests of the specimens for the
3 purpose of determining the alcohol concentration or presence
4 of drugs, subject to this section. The withdrawal of the body
5 substances and the test or tests shall be administered at the
6 written request of a peace officer having reasonable grounds
7 to believe that the person was operating a motor vehicle in
8 violation of section 321J.2 or 321J.2A, and if any of the
9 following conditions exist:

10 Sec. 13. Section 321J.6, subsection 1, Code 1995, is
11 amended by adding the following new paragraph:

12 NEW PARAGRAPH. g. The preliminary breath screening test
13 was administered and it indicated an alcohol concentration of
14 .02 or more but less than .10 and the person is under the age
15 of twenty-one.

16 Sec. 14. Section 321J.8, Code 1995, is amended to read as
17 follows:

18 321J.8 STATEMENT OF OFFICER.

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

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

25 2. If the person submits to the test and the results
26 indicate an alcohol concentration as defined in section 321J.1
27 of .10 or more, or the person is under the age of twenty-one
28 and the results indicate an alcohol concentration of .02 or
29 more, but less than .10, the person's motor vehicle license or
30 nonresident operating privilege will be revoked by the
31 department as required by and for the applicable period
32 specified under section 321J.12.

33 3. If the person is operating a commercial motor vehicle
34 as defined in section 321.1 and either refuses to submit to
35 the test or submits to the test and the results indicate an

1 alcohol concentration of 0.04 or more, the person is
2 disqualified from operating a commercial motor vehicle for the
3 applicable period under section 321.208 in addition to any
4 revocation of the person's motor vehicle license or
5 nonresident operating privilege which may be applicable under
6 this chapter.

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

9 Sec. 15. Section 321J.9, Code 1995, is amended to read as
10 follows:

11 321J.9 REFUSAL TO SUBMIT -- REVOCATION.

12 1. If a person refuses to submit to the chemical testing,
13 a test shall not be given, but the department, upon the
14 receipt of the peace officer's certification, subject to
15 penalty for perjury, that the officer had reasonable grounds
16 to believe the person to have been operating a motor vehicle
17 in violation of section 321J.2 or 321J.2A, that specified
18 conditions existed for chemical testing pursuant to section
19 321J.6, and that the person refused to submit to the chemical
20 testing, shall revoke the person's motor vehicle license and
21 any nonresident operating privilege for ~~a-period~~ the following
22 periods of two time:

23 a. Two hundred forty days if the person has no previous
24 revocation within the previous six years under this chapter;
25 and five

26 b. Five hundred forty days if the person has one or more
27 previous revocations within the previous six years under this
28 chapter, ~~or if.~~

29 2. A person whose motor vehicle license or nonresident
30 operating privileges are revoked for two hundred forty days
31 under subsection 1, paragraph "a", shall not be eligible for a
32 temporary restricted license for at least ninety days after
33 the effective date of the revocation. A person whose motor
34 vehicle license or nonresident operating privileges are
35 revoked for five hundred forty days under subsection 1,

1 paragraph "b", shall not be eligible for a temporary
2 restricted license for at least one year after the effective
3 date of the revocation.

4 3. If the person is a resident without a license or permit
5 to operate a motor vehicle in this state, the department shall
6 deny to the person the issuance of a license or permit for the
7 same period a license or permit would be revoked, and deny
8 issuance of a temporary restricted license for the same period
9 of ineligibility for receipt of a temporary restricted
10 license, subject to review as provided in this chapter.

11 4. The effective date of revocation shall be twenty ten
12 days after the department has mailed notice of revocation to
13 the person by certified mail or, on behalf of the department,
14 a peace officer offering or directing the administration of a
15 chemical test may serve immediate notice of intention to
16 revoke and of revocation on a person who refuses to permit
17 chemical testing. If the peace officer serves that immediate
18 notice, the peace officer shall take the Iowa license or
19 permit of the driver, if any, and issue a temporary license
20 effective for only twenty ten days. The peace officer shall
21 immediately send the person's license to the department along
22 with the officer's certificate indicating the person's refusal
23 to submit to chemical testing.

24 Sec. 16. Section 321J.12, Code 1995, is amended to read as
25 follows:

26 321J.12 TEST RESULT REVOCATION.

27 1. Upon certification, subject to penalty for perjury, by
28 the peace officer that there existed reasonable grounds to
29 believe that the person had been operating a motor vehicle in
30 violation of section 321J.2, that there existed one or more of
31 the necessary conditions for chemical testing described in
32 section 321J.6, subsection 1, and that the person submitted to
33 chemical testing and the test results indicated an alcohol
34 concentration as defined in section 321J.1 of .10 or more, the
35 department shall revoke the person's motor vehicle license or

1 nonresident operating privilege for ~~a-period~~ the following
2 periods of one time:

3 a. One hundred eighty days if the person has had no
4 revocation within the previous six years under this chapter.
5 and-one

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

8 2. A person whose motor vehicle license or nonresident
9 operating privileges have been revoked under subsection 1,
10 paragraph "a", shall not be eligible for any temporary
11 restricted license for at least thirty days after the
12 effective date of the revocation. A person whose license or
13 privileges have been revoked under subsection 1, paragraph
14 "b", for one year shall not be eligible for any temporary
15 restricted license for one year after the effective date of
16 the revocation.

17 3. The effective date of the revocation shall be twenty
18 ten days after the department has mailed notice of revocation
19 to the person by certified mail. The peace officer who
20 requested or directed the administration of the chemical test
21 may, on behalf of the department, serve immediate notice of
22 revocation on a person whose test results indicated an alcohol
23 concentration of .10 or more.

24 4. If the peace officer serves that immediate notice, the
25 peace officer shall take the person's Iowa license or permit,
26 if any, and issue a temporary license valid only for twenty
27 ten days. The peace officer shall immediately send the
28 person's driver's license to the department along with the
29 officer's certificate indicating that the test results
30 indicated an alcohol concentration of .10 or more.

31 5. Upon certification, subject to penalty of perjury, by
32 the peace officer that there existed reasonable grounds to
33 believe that the person had been operating a motor vehicle in
34 violation of section 321J.2A, that there existed one or more
35 of the necessary conditions for chemical testing described in

1 section 321J.6, subsection 1, and that the person submitted to
2 chemical testing and the test results indicated an alcohol
3 concentration as defined in section 321J.1 of .02 or more but
4 less than .10, the department shall revoke the person's motor
5 vehicle license or operating privilege for a period of thirty
6 days if the person has had no revocations within the previous
7 six years under section 321J.2A, and for a period of ninety
8 days if the person has had one or more previous revocations
9 within the previous six years under section 321J.2A.

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

18 Sec. 17. Section 321J.13, subsections 1 through 5, Code
19 1995, are amended to read as follows:

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

34 2. The department shall grant the person an opportunity to
35 be heard within forty-five days of receipt of a request for a

1 hearing if the request is made not later than thirty ten days
2 after receipt of notice of revocation served pursuant to
3 section 321J.9 or 321J.12. The hearing shall be before the
4 department in the county where the alleged events occurred,
5 unless the director and the person agree that the hearing may
6 be held in some other county, or the hearing may be held by
7 telephone conference at the discretion of the agency
8 conducting the hearing. The hearing may be recorded and its
9 scope shall be limited to the issues of whether a peace
10 officer had reasonable grounds to believe that the person was
11 operating a motor vehicle in violation of section 321J.2 or
12 section 321J.2A and either of the following:

13 a. Whether the person refused to submit to the test or
14 tests.

15 b. Whether a test was administered and the test results
16 indicated an alcohol concentration as defined in section
17 321J.1 of .10 or more or whether a test was administered and
18 the test results indicated an alcohol concentration as defined
19 in section 321J.1 of .02 or more pursuant to section 321J.2A.

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

34 4. A person whose motor vehicle license or operating
35 privilege has been or is being revoked under section 321J.9 or

1 321J.12 may reopen a department hearing on the revocation if
2 the person submits a petition stating that new evidence has
3 been discovered which provides grounds for rescission of the
4 revocation, or prevail at the hearing to rescind the
5 revocation, if the person submits a petition stating that a
6 criminal action on a charge of a violation of section 321J.2
7 filed as a result of the same circumstances which resulted in
8 the revocation has resulted in a decision in which the court
9 has held that the peace officer did not have reasonable
10 grounds to believe that a violation of section 321J.2 or
11 321J.2A had occurred to support a request for or to administer
12 a chemical test or which has held the chemical test to be
13 otherwise inadmissible or invalid. Such a decision by the
14 court is binding on the department and the department shall
15 rescind the revocation.

16 5. The department shall stay the revocation of a person's
17 motor vehicle license or operating privilege for the period
18 that the person is contesting the revocation under this
19 section or section 321J.14 if it is shown to the satisfaction
20 of the department that the new evidence is material and that
21 there were valid reasons for failure to present it in the
22 contested case proceeding before the department. However, a
23 stay shall not be granted for violations of section 321J.2A.

24 Sec. 18. Section 321J.15, Code 1995, is amended to read as
25 follows:

26 321J.15 EVIDENCE IN ANY ACTION.

27 Upon the trial of a civil or criminal action or proceeding
28 arising out of acts alleged to have been committed by a person
29 while operating a motor vehicle in violation of section 321J.2
30 or 321J.2A, evidence of the alcohol concentration or the
31 presence of drugs in the person's body substances at the time
32 of the act alleged as shown by a chemical analysis of the
33 person's blood, breath, or urine is admissible. If it is
34 established at trial that an analysis of a breath specimen was
35 performed by a certified operator using a device and methods

1 approved by the commissioner of public safety, no further
2 foundation is necessary for introduction of the evidence.

3 Sec. 19. Section 321J.16, Code 1995, is amended to read as
4 follows:

5 321J.16 PROOF OF REFUSAL ADMISSIBLE.

6 If a person refuses to submit to a chemical test, proof of
7 refusal is admissible in any civil or criminal action or
8 proceeding arising out of acts alleged to have been committed
9 while the person was operating a motor vehicle in violation of
10 section 321J.2 or 321J.2A.

11 Sec. 20. Section 321J.20, subsections 1 and 2, Code 1995,
12 are amended to read as follows:

13 1. The department may, on application, issue a temporary
14 restricted license to a person whose motor vehicle license is
15 revoked under this chapter allowing the person to drive to and
16 from the person's home and specified places at specified times
17 which can be verified by the department and which are required
18 by the person's full-time or part-time employment, continuing
19 health care or the continuing health care of another who is
20 dependent upon the person, continuing education while enrolled
21 in an educational institution on a part-time or full-time
22 basis and while pursuing a course of study leading to a
23 diploma, degree, or other certification of successful
24 educational completion, substance abuse treatment, and court-
25 ordered community service responsibilities if the person's
26 motor vehicle license has not been revoked under section
27 321J.4, 321J.9, or 321J.12 within the previous six years and
28 if any of the following apply:

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

33 b. The person's motor vehicle license is revoked under
34 section 321J.9 and the person has entered a plea of guilty on
35 a charge of a violation of section 321J.2 which arose from the

1 same set of circumstances which resulted in the person's motor
2 vehicle license revocation under section 321J.9 and the guilty
3 plea is not withdrawn at the time of or after application for
4 the temporary restricted license, and the minimum period of
5 ineligibility for issuance of a temporary restricted license
6 has expired.

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

10 However, a temporary restricted license may be issued if
11 the person's motor vehicle license is revoked under section
12 321J.9, and the revocation is a second revocation under this
13 chapter, and the first three hundred and ~~sixty~~ sixty-five days
14 of the revocation have expired.

15 2. This section does not apply to a person whose license
16 was revoked under section 321J.2A or section 321J.4,
17 subsection 3 or 5, or to a person whose license is suspended
18 or revoked for another reason.

19 Sec. 21. Section 805.8, subsection 10, Code 1995, is
20 amended by adding the following new paragraph:

21 NEW PARAGRAPH. c. For violations of section 321.284, the
22 scheduled fine is fifty dollars.

23 Sec. 22. Section 809.1, subsection 4, Code 1995, is
24 amended to read as follows:

25 4. The definitions contained in subsections 1 through 3
26 shall not apply to violations of chapter 321 ~~or 321J~~.

27 Sec. 23. REPEAL. Section 321J.4A, Code 1995, is repealed.

28 Sec. 24. IMPLEMENTATION OF ACT -- LEGISLATIVE INTENT.

29 Section 25B.2, subsection 3, shall not apply to this Act.

30 However, it is the intent of the general assembly that the
31 fees and funds generated as a result of the passage of this
32 Act be used to cover the costs associated with the additional
33 duties imposed.

34

EXPLANATION

35 This bill moves language prohibiting the possession of open

1 receptacles containing alcoholic beverages in a motor vehicle
2 from chapter 123, which regulates alcoholic beverages, to
3 chapter 321, which governs motor vehicles, and provides that
4 violations are punishable by a scheduled fine of \$50.

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

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

17 Minimum revocation periods of 30 days are established if
18 the person submitted to and failed a chemical test resulting
19 in an indication of an alcohol concentration of .10 or more,
20 90 days if the person refuses to submit to a chemical test,
21 and one year for a person who had had one or more previous
22 revocations under chapter 321J within the previous six years.

23 This bill requires that the local prosecuting attorney and
24 the state department of transportation be given notice by the
25 clerk of the district court of, and the opportunity to request
26 a hearing on, a petition for a temporary restricted license
27 pursuant to section 321J.4.

28 The bill further provides for a reduction of the effective
29 date of revocation from 20 to 10 days and requires that a
30 request for hearing must be completed and returned to the
31 department within 10 days (currently 30) upon receipt of
32 notice of revocation. The bill also reduces the time within
33 which a new hearing must be granted after a hearing result is
34 contested.

35 Under the bill persons subject to judicial, as well as

1 administrative, revocation are subject to "hard" suspension
2 provisions.

3 This bill also provides for the administrative revocation
4 of the motor vehicle license or nonresident operating
5 privileges of persons under the age of 21 who are found to be
6 operating a motor vehicle while having an alcohol
7 concentration level of .02 or greater, but less than .10. The
8 revocations are for 30 days for a first offense and 90 days
9 for a second or subsequent offense. Under the bill, once the
10 period of revocation ends the individual is not subject to the
11 motor vehicle financial responsibility provisions, but if the
12 person drives while the person's license is revoked, criminal
13 penalties will apply. A person whose license or operating
14 privilege is revoked under the new provisions is required to
15 pay the civil penalty to regain the person's license or
16 privilege. The implied consent provisions and the two-hour
17 limitation on chemical test results do apply to the requests
18 for chemical testing under the .02 standard. Under the bill,
19 persons whose licenses are revoked for being over the .02
20 level are not eligible to receive temporary restricted
21 licenses during the period of revocation. Provision is made
22 for destruction of records relating to the revocation under
23 the new provisions after the revocation is 12 years old.

24 This bill also provides, upon the conviction of a person of
25 operating while intoxicated and being a second or subsequent
26 offender (OWI 2nd), that the court may order the impoundment
27 or immobilization of motor vehicles that are either owned or
28 used by the person to commit the offense. The person or
29 agency responsible for carrying out the order will determine
30 whether the vehicle is to be impounded or immobilized. If a
31 motor vehicle is impounded or immobilized, the period of
32 impoundment or immobilization shall be for 180 days or the
33 period of license suspension for the person convicted of OWI
34 2nd, whichever period is longer. The person convicted of OWI
35 2nd is prohibited from purchasing another vehicle or selling

1 or transferring title to an impounded or immobilized vehicle
2 during the period of impoundment or immobilization. Violation
3 of the requirement is a serious misdemeanor. With the
4 exception of the situation in which the person convicted of
5 OWI 2nd is not in lawful possession of the motor vehicle,
6 owners of motor vehicles which are the subject of orders for
7 impoundment or immobilization shall pay a fee of \$100 plus
8 expenses to cover the cost of impoundment or immobilization
9 before the owner can obtain the return of the motor vehicle.
10 Motor vehicles which are impounded or immobilized shall be
11 forfeited to the state if the owner fails to claim the vehicle
12 within 30 days of expiration of the period of impoundment or
13 immobilization. Motor vehicles which are subject to an order
14 for impoundment or immobilization and which are operated on a
15 street or highway in the state during the period of
16 impoundment or immobilization are to be seized and forfeited
17 to the state. An owner, who is not the person convicted of
18 the offense of OWI 2nd, and who either did not know or should
19 not have known that the vehicle was to be used in the
20 commission of the offense has the opportunity to obtain the
21 release of the vehicle if the owner can prove that they did
22 not know or should not have known about the offense. The bill
23 establishes a presumption that, unless the vehicle is stolen,
24 owners have knowledge that their vehicles are to be used in
25 the commission of the offense of operating while intoxicated
26 by persons who use their motor vehicles and are subsequently
27 convicted. Motor vehicle rental or leasing companies are
28 permitted to submit a claim for release of a motor vehicle
29 within 24 hours of receipt of notice of the order for
30 impoundment or immobilization and may obtain the return of the
31 vehicle without charge if the company did not know or consent
32 to the use of the vehicle in the offense. Persons with
33 security interests in motor vehicles also may obtain release
34 of a vehicle without payment of any charges.
35 Loss of use of a vehicle due to impoundment or

1 immobilization is not loss of use for purposes of a contract
2 for insurance.

3 This bill may create a state mandate under chapter 25B.
4 The bill makes inapplicable the statutory provision which
5 would relieve a political subdivision from complying with a
6 state mandate if funding for the cost of the state mandate is
7 not provided or specified. However, the bill also provides
8 that it is the intent of the general assembly that the fees
9 and funds generated in the bill are to be used to cover the
10 costs associated with the additional duties imposed.

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**SENATE FILE 446
FISCAL NOTE**

The estimate for Senate File 446 is hereby submitted as a fiscal note pursuant to Joint Rule 17 and as a correctional impact statement pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 446 changes the penalty for operating a motor vehicle with an open container from a simple misdemeanor to a \$50 scheduled fine, changes the penalty for driving with a suspended license from a simple to a serious misdemeanor, requires the establishment of periods of 'hard' revocation of a license for persons operating a motor vehicle while intoxicated (OWI), makes it unlawful for persons under the age of 21 to operate a motor vehicle with a blood alcohol content of .02 or more and restricts these persons from obtaining a temporary restricted license, and provides for the impoundment of a vehicle that is owned or used by a person who commits a second or subsequent OWI offense.

Assumptions

1. The average number of implied consent notices sent to persons under 21 for OWI offenses with blood alcohol content of .10 was 2,100. It is assumed that decreasing the blood alcohol content to .02 for persons under 21 will result in an increase of 1,075 incidents (approximately 50%).
2. The percentage of contested cases and director review hearings will be directly proportionate to the current percentages for implied consent which is 13% or 413 cases.
3. The percentage of contested cases appealed to director review hearings will be directly proportionate to the current percentages of appeals which is 12% or 50 cases.
4. The percentage of implied consents issued to persons under 21 and served by an officer will be directly proportionate to the current percentages for implied consent.
5. Fifty percent of all notices sent via certified mail will be returned unclaimed which is proportionate to experiences with service of other revocation notices.
6. Less than 1% of implied consents issued to persons under 21 will remain unserved which is proportionate to experiences with service of other revocation notices.
7. Percentages of denials of temporary restricted licenses for implied consents issued to persons under 21 will be directly proportionate to current percentages of denied temporary restricted licenses.
8. Programming costs to add .02 option to the Mobile Operating While Intoxicated Component of the Officer Information Manager will be \$20,000.
9. The number of convictions for second and subsequent OWI offenders will be similar to the number convicted in FY 1992 which was 3,537.
10. Law enforcement agencies will choose to use immobilization of vehicles rather than impoundment to minimize costs.

11. The average cost per day for impoundment of a vehicle is \$6.
12. One percent of the 3,537 convictions would be convicted of a serious misdemeanor associated with purchasing, selling or transferring title to an impounded vehicle during the period of impoundment.

Correctional Impact

This Bill will not have a significant impact on the Department of Corrections. The prison population is estimated to increase by five inmates due to probation/parole revocations.

Fiscal Effect

Departments of Transportation and Inspections and Appeals

1. First-year cost to reprint implied consent packets: \$8,300
2. First-year cost of programming: \$20,000
3. Costs associated with serving notices of revocation: \$5,045
4. Increased cost for director review hearings on appealed cases: \$2,478
5. Increased cost to the Department of Inspections and Appeals for contested case hearings: \$41,212
6. Temporary Restricted License application processing: \$846

Total Projected Cost to the Road Use Tax Fund:

First Year: \$77,881

Second and subsequent years: \$49,581

Department of Public Safety

This Bill complies with federal Section 410 which sets criteria for the establishment of 'hard' revocation of a driver's license. Compliance with this federal law will allow the Department of Public Safety to receive up to \$617,000 in federal Highway Traffic Safety funds. In addition, enactment of a .02 blood alcohol level for persons under 21 will allow the Department of Public Safety to receive up to \$102,000 in federal Highway Traffic Safety 'Bonus' funds.

Department of Corrections

The increased annual cost to the Department of Corrections is estimated at \$18,250 (5 inmates @ \$10/day).

This Bill may increase the cost to Community Based Correctional Facilities but it is not expected to be significant.

Local Governments

The cost to local governments for the impoundment or immobilization of vehicles is not known. This Bill requires the owner who is convicted of OWI to pay all costs associated with impoundment and immobilization and pay a fee of \$100 in addition to these costs to offset costs incurred by the local jurisdictions. Owners of impounded or immobilized vehicles who do not pay the required fees will subject the vehicle to forfeiture by the State.

-3-

Sources: Department of Transportation
Criminal and Juvenile Justice Planning Division, Dept. of Human Rights
Department of Public Safety

(LSB 2135sv, DLR)

FILED MARCH 28, 1995

BY DENNIS PROUTY, FISCAL DIRECTOR

SENATE FILE 446

S-3218 (REPLACES S-3218 from March 27, 1995 Clip Sheet)

1 Amend Senate File 446 as follows:

2 1. Page 7, line 14, by striking the word "may"
3 and inserting the following: "shall".

4 2. Page 7, line 14, by striking the words "and
5 any" and inserting the following: "and used to commit
6 the offense and any other".

7 3. Page 7, line 15, by striking the words
8 "operated by the person" and inserting the following:
9 "used by the person in the commission of the offense".

10 4. Page 7, line 16, by inserting after the word
11 "immobilized." the following: "For purposes of this
12 section, "immobilized" means the installation of a
13 device that completely prevents a motor vehicle from
14 being operated, or the installation of an ignition
15 interlock device, of a type approved by the
16 commissioner of public safety, in a motor vehicle."

17 5. Page 12, by inserting after line 2 the follow-
18 ing:

19 " . Notwithstanding the requirements of this
20 section, any of the following persons may make
21 application to the court for permission to operate a
22 motor vehicle, which is impounded or immobilized
23 pursuant to this section, during the period of im-
24 poundment or immobilization, if the applicant's motor
25 vehicle license or operating privilege has not been
26 suspended, denied, or revoked, and an ignition
27 interlock device of a type approved by the
28 commissioner of public safety is installed in the
29 motor vehicle prior to operation:

30 a. A person, other than the person who committed
31 the offense which resulted in the impoundment or
32 immobilization, who is not a member of the immediate
33 family of the person who committed the offense but is
34 a joint owner of the motor vehicle.

35 b. A member of the immediate family of the person
36 who committed the offense which resulted in the
37 impoundment or immobilization, if the member
38 demonstrates that the motor vehicle that is subject to
39 the order for impoundment or immobilization is the
40 only motor vehicle possessed by the family.

41 For purposes of this section, "a member of the
42 immediate family" means a spouse, child, or parent of
43 the person who committed the offense."

44 6. By numbering and renumbering as necessary.

By ROD HALVORSON
O. GENE MADDOX

S-3218 FILED MARCH 23, 1995

(P. 872) 3-27-95
Adopted
~~872~~

S-3217

1 Amend Senate File 446 as follows:

2 1. Page 1, by inserting after line 12, the
3 following:

4 "Sec. _____. Section 321.89, subsection 1, paragraph
5 b, Code 1995, is amended by adding the following new
6 subparagraph:

7 NEW SUBPARAGRAPH. (6) A vehicle that has been
8 impounded pursuant to section 321J.4B by order of the
9 court and whose owner has not paid the impoundment
10 fees after notification by the person or agency
11 responsible for carrying out the impoundment order."

12 2. Page 8, by inserting after line 32 the
13 following:

14 "_____. Upon receipt of the court order for
15 impoundment or immobilization and seizure of the motor
16 vehicle, if the agency responsible for carrying out
17 the order determines that the motor vehicle is to be
18 impounded, the agency shall review the value of the
19 vehicle in relation to the costs associated with the
20 period of impoundment of the motor vehicle specified
21 in the order. If the agency determines that the costs
22 of impoundment of the motor vehicle exceed the actual
23 wholesale value of the motor vehicle, the agency may
24 treat the vehicle as an abandoned vehicle pursuant to
25 section 321.89. If the agency elects to treat the
26 motor vehicle as abandoned, the agency shall notify
27 the registered owner of the motor vehicle that the
28 vehicle shall be deemed abandoned and shall be sold in
29 the manner provided in section 321.89 if payment of
30 the total cost of impoundment is not received within
31 twenty-one days of the mailing of the notice. The
32 agency shall provide documentation regarding the
33 valuation of the vehicle and the costs of impoundment.
34 This paragraph shall not apply to vehicles that are
35 immobilized pursuant to this section or if subsection
36 14 or 15 applies."

37 2. By numbering and renumbering as necessary.

By ROD HALVORSON

S-3217 FILED MARCH 23, 1995

(p. 871)
Adopted
3-27-95

1 Section 1. Section 123.28, unnumbered paragraph 2, Code
2 1995, is amended by striking the unnumbered paragraph.

3 Sec. 2. Section 321.12, Code 1995, is amended by adding
4 the following new unnumbered paragraph:

5 NEW UNNUMBERED PARAGRAPH. The director shall destroy any
6 operating records pertaining to revocations for violations of
7 section 321J.2A which are more than twelve years old. The
8 twelve-year period shall commence with the date the revocation
9 of the person's operating privileges becomes effective. This
10 paragraph shall not apply to records of revocations which
11 pertain to violations of section 321J.2A by persons operating
12 a commercial motor vehicle.

13 Sec. 3. Section 321.89, subsection 1, paragraph b, Code
14 1995, is amended by adding the following new subparagraph:

15 NEW SUBPARAGRAPH. (6) A vehicle that has been impounded
16 pursuant to section 321J.4B by order of the court and whose
17 owner has not paid the impoundment fees after notification by
18 the person or agency responsible for carrying out the
19 impoundment order.

20 Sec. 4. Section 321.218, subsection 1, Code 1995, is
21 amended to read as follows:

22 1. A person whose motor vehicle license or operating
23 privilege has been denied, canceled, suspended, or revoked as
24 provided in this chapter, and who operates a motor vehicle
25 upon the highways of this state while the license or privilege
26 is denied, canceled, suspended, or revoked, commits a simple
27 serious misdemeanor.

28 Sec. 5. NEW SECTION. 321.284 OPEN CONTAINERS IN MOTOR
29 VEHICLES.

30 A person driving a motor vehicle shall not knowingly
31 possess in a motor vehicle upon a public street or highway an
32 open or unsealed bottle, can, jar, or other receptacle
33 containing an alcoholic beverage, wine, or beer with the
34 intent to consume the alcoholic beverage, wine, or beer while
35 the motor vehicle is upon a public street or highway.

1 Evidence that an open or unsealed receptacle containing an
2 alcoholic beverage, wine, or beer was found during an
3 authorized search in the glove compartment, utility
4 compartment, console, front passenger seat, or any unlocked
5 portable device and within the immediate reach of the driver
6 while the motor vehicle is upon a public street or highway is
7 evidence from which the court or jury may infer that the
8 driver intended to consume the alcoholic beverage, wine, or
9 beer while upon the public street or highway if the inference
10 is supported by corroborative evidence. However, an open or
11 unsealed receptacle containing an alcoholic beverage, wine, or
12 beer may be transported at any time in the trunk of the motor
13 vehicle or in some other area of the interior of the motor
14 vehicle not designed or intended to be occupied by the driver
15 and not readily accessible to the driver while the motor
16 vehicle is in motion. A person convicted of a violation of
17 this paragraph is guilty of a simple misdemeanor punishable as
18 a scheduled violation under section 805.8, subsection 10,
19 paragraph "c".

20 Sec. 6. Section 321A.17, subsection 5, Code 1995, is
21 amended to read as follows:

22 5. An individual applying for a motor vehicle license
23 following a period of suspension or revocation under section
24 321.209, subsection 8, section 321.210, subsection 1,
25 paragraph "d", or section 321.210A, 321.213B, 321.216B, or
26 321.513, ~~or~~ following a period of suspension under section
27 321.194, or following a period of revocation under section
28 321J.2A, is not required to maintain proof of financial
29 responsibility under this section.

30 Sec. 7. NEW SECTION. 321J.2A PERSONS UNDER THE AGE OF
31 TWENTY-ONE.

32 A person who is under the age of twenty-one shall not
33 operate a motor vehicle while having an alcohol concentration,
34 as defined under section 321J.1, of .02 or more. The motor
35 vehicle license or nonresident operating privilege of a person

1 who is under the age of twenty-one and who operates a motor
2 vehicle while having an alcohol concentration of .02 or more
3 shall be revoked by the department for the period of time
4 specified under section 321J.12. A revocation under this
5 section shall not preclude a prosecution or conviction under
6 any applicable criminal provisions of this chapter. However,
7 if the person is convicted of a criminal offense under section
8 321J.2, the revocation imposed under this section shall be
9 superseded by any revocation imposed as a result of the
10 conviction.

11 In any proceeding regarding a revocation under this
12 section, evidence of the results of analysis of a specimen of
13 the defendant's blood, breath, or urine is admissible upon
14 proof of a proper foundation. The alcohol concentration
15 established by the results of an analysis of a specimen of the
16 defendant's blood, breath, or urine withdrawn within two hours
17 after the defendant was driving or in physical control of a
18 motor vehicle is presumed to be the alcohol concentration at
19 the time of driving or being in physical control of the motor
20 vehicle.

21 Sec. 8. Section 321J.4, subsections 1 and 2, Code 1995,
22 are amended to read as follows:

23 1. If a defendant is convicted of a violation of section
24 321J.2 and the defendant's motor vehicle license or
25 nonresident operating privilege has not been revoked under
26 section 321J.9 or 321J.12 for the occurrence from which the
27 arrest arose, the department shall revoke the defendant's
28 motor vehicle license or nonresident operating privilege for
29 one hundred eighty days if the defendant has had no previous
30 conviction ~~under section 321J.2~~ or revocation under ~~section~~
31 ~~321J.9 or 321J.12~~ this chapter within the previous six years
32 and the defendant shall not be eligible for any temporary
33 restricted license for at least thirty days after the
34 effective date of the revocation if a test was obtained, and
35 for at least ninety days if a test was refused.

1 If a defendant is convicted of a violation of section
2 321J.2, and the defendant's motor vehicle license or
3 nonresident operating privilege has not already been revoked
4 under section 321J.9 or 321J.12 for the occurrence from which
5 the arrest arose, the department shall revoke the defendant's
6 motor vehicle license or nonresident operating privilege for
7 one year if the defendant has had one or more previous
8 convictions or revocations under those sections this chapter
9 within the previous six years. The defendant shall not be
10 eligible for any temporary restricted license during the
11 entire one year revocation period.

12 2. If the court defers judgment pursuant to section 907.3
13 for a violation of section 321J.2, and if the defendant's
14 motor vehicle license or nonresident operating privilege has
15 not been revoked under section 321J.9 or 321J.12, or has not
16 otherwise been revoked for the occurrence from which the
17 arrest arose, the court shall order the department to revoke
18 the defendant's motor vehicle license or nonresident operating
19 privilege for a period of not less than thirty days nor more
20 than ninety days ~~if the defendant's motor vehicle license or~~
21 ~~nonresident operating privilege has not been revoked under~~
22 ~~section 321J.9 or 321J.12 or has not otherwise been revoked~~
23 ~~for the occurrence from which the arrest arose.~~ The defendant
24 shall not be eligible for any temporary restricted license for
25 at least thirty days after the effective date of the
26 revocation if a test was obtained and for at least ninety days
27 if a test was refused. The court shall immediately require
28 the defendant to surrender to it all Iowa licenses or permits
29 held by the defendant, which the court shall forward to the
30 department with a copy of the order deferring judgment.

31 Sec. 9. Section 321J.4, subsection 3, paragraph a, Code
32 1995, is amended to read as follows:

33 a. Upon a plea or verdict of guilty of a third or
34 subsequent violation of section 321J.2, the court shall order
35 the department to revoke the defendant's motor vehicle license

1 or nonresident operating privilege for a period of six years.
2 The defendant shall not be eligible for a temporary restricted
3 license for at least one year after the effective date of the
4 revocation. The court shall require the defendant to
5 surrender to it all Iowa licenses or permits held by the
6 defendant, which the court shall forward to the department
7 with a copy of the order for revocation.

8 Sec. 10. Section 321J.4, subsections 4, 5, and 8, Code
9 1995, are amended to read as follows:

10 4. Upon a plea or verdict of guilty of a violation of
11 section 321J.2 which involved a personal injury, the court
12 shall determine in open court, from consideration of the
13 information in the file and any other evidence the parties may
14 submit, whether a serious injury was sustained by any person
15 other than the defendant and, if so, whether the defendant's
16 conduct in violation of section 321J.2 caused the serious
17 injury. If the court so determines, the court shall order the
18 department to revoke the defendant's motor vehicle license or
19 nonresident operating privilege for a period of one year in
20 addition to any other period of suspension or revocation. The
21 defendant shall not be eligible for any temporary restricted
22 license until the minimum period of ineligibility has expired
23 under section 321J.4, 321J.9, 321J.12, or 321J.20. The
24 defendant shall surrender to the court any Iowa license or
25 permit and the court shall forward it to the department with a
26 copy of the order for revocation.

27 5. Upon a plea or verdict of guilty of a violation of
28 section 321J.2 which involved a death, the court shall
29 determine in open court, from consideration of the information
30 in the file and any other evidence the parties may submit,
31 whether a death occurred and, if so, whether the defendant's
32 conduct in violation of section 321J.2 caused the death. If
33 the court so determines, the court shall order the department
34 to revoke the defendant's motor vehicle license or nonresident
35 operating privilege for a period of six years. The defendant

1 shall not be eligible for any temporary restricted license
2 until the minimum period of ineligibility has expired under
3 section 321J.4, 321J.9, 321J.12, or 321J.20. The defendant
4 shall surrender to the court any Iowa license or permit and
5 the court shall forward it to the department with a copy of
6 the order for revocation.

7 8. A person whose motor vehicle license has either been
8 revoked under this chapter, or revoked or suspended under
9 chapter 321 solely for violations of this chapter, or who has
10 been determined to be a habitual offender under chapter 321
11 based solely on violations of this chapter, and who is not
12 eligible for a temporary restricted license under this chapter
13 may petition the court upon the expiration of the minimum
14 period of ineligibility for a temporary restricted license
15 provided for under section 321J.4, 321J.9, 321J.12, or 321J.20
16 for an order to the department to require the department to
17 issue a temporary restricted license to the person
18 notwithstanding section 321.560. Upon the filing of a
19 petition for a temporary restricted license under this
20 section, the clerk of the district court in the county where
21 the violation that resulted in the revocation occurred shall
22 send notice of the petition to the department and the
23 prosecuting attorney. The department and the prosecuting
24 attorney shall each be given an opportunity to respond to and
25 request a hearing on the petition. The court shall determine
26 if the temporary restricted license is necessary for the
27 person to maintain the person's present employment. However,
28 a temporary restricted license shall not be ordered or issued
29 for violations of section 321J.2A or to persons under the age
30 of twenty-one who commit violations under section 321J.2. If
31 the court determines that the temporary restricted license is
32 necessary for the person to maintain the person's present
33 employment, and that the minimum period of ineligibility for
34 receipt of a temporary license has expired, the court shall
35 order the department to issue to the person a temporary

1 restricted license conditioned upon the person's certification
2 to the court of the installation of approved ignition
3 interlock devices in all motor vehicles that it is necessary
4 for the person to operate to maintain the person's present
5 employment. Section 321.561 does not apply to a person
6 operating a motor vehicle in the manner permitted under this
7 subsection. If the person operates a motor vehicle which does
8 not have an approved ignition interlock device or if the
9 person tampers with or circumvents an ignition interlock
10 device, in addition to other penalties provided, the person's
11 temporary restricted license shall be revoked. A person
12 holding a temporary restricted license issued under this
13 subsection shall not operate a commercial motor vehicle, as
14 defined in section 321.1, on a highway if a commercial
15 driver's license is required for the person to operate the
16 commercial motor vehicle.

17 Sec. 11. NEW SECTION. 321J.4B MOTOR VEHICLE IMPOUNDMENT
18 OR IMMOBILIZATION -- PENALTY.

19 1. If a person is convicted of a second, third, or
20 subsequent offense of operating while intoxicated, the court
21 shall order that any motor vehicles owned by the person and
22 used to commit the offense and any other motor vehicles used
23 by the person in the commission of the offense be impounded or
24 immobilized. For purposes of this section, "immobilized"
25 means the installation of a device that completely prevents a
26 motor vehicle from being operated, or the installation of an
27 ignition interlock device, of a type approved by the
28 commissioner of public safety, in a motor vehicle.

29 2. The order shall specify all of the following:

30 a. The motor vehicles that are subject to the order.

31 b. The period of impoundment or immobilization.

32 c. The person or agency responsible for carrying out the
33 order requiring impoundment or immobilization of the motor
34 vehicle. If a vehicle which is to be impounded or immobilized
35 is in the custody of a law enforcement agency, the court shall

1 designate that agency as the responsible agency. If the
2 vehicle is not in the custody of a law enforcement agency, the
3 person or agency responsible for carrying out the order shall
4 be any person deemed appropriate by the court, including but
5 not limited to a law enforcement agency with jurisdiction over
6 the area in which the residence of the vehicle owner is
7 located. The person or agency responsible for carrying out
8 the order shall determine whether the motor vehicle shall be
9 impounded or immobilized.

10 3. The period of impoundment or immobilization of a motor
11 vehicle under this section shall be the period of license
12 revocation imposed upon the person convicted of the offense or
13 one hundred eighty days, whichever period is longer. The
14 impoundment or immobilization period shall commence on the day
15 that the vehicle is actually impounded or immobilized.

16 4. The clerk of the district court shall send a copy of
17 the order to the department, the person convicted of the
18 offense, the motor vehicle owner if the owner is not the
19 person convicted, and the person or agency responsible for
20 executing the order for impoundment or immobilization.

21 5. If the vehicle to be impounded or immobilized is in the
22 custody of a law enforcement agency, the agency shall
23 immobilize or impound the vehicle upon receipt of the order,
24 seize the motor vehicle's license plates and registration, and
25 shall send or deliver the vehicle's license plates and
26 registration to the department.

27 6. If the vehicle to be impounded or immobilized is not in
28 the custody of a law enforcement agency, the person or agency
29 designated in the order as the person or agency responsible
30 for executing the order shall, upon receipt of the order,
31 promptly locate the vehicle specified in the order, seize the
32 motor vehicle and the license plates, and send or deliver the
33 vehicle's license plates to the department.

34 7. If the vehicle is located at a place other than the
35 place at which the impoundment or immobilization is to be

1 carried out, the person or agency responsible for executing
2 the order shall arrange for the vehicle to be moved to the
3 place of impoundment or immobilization. When the vehicle is
4 found, is impounded or immobilized, and is at the place of
5 impoundment or immobilization, the person or agency
6 responsible for executing the order shall notify the clerk of
7 the date on which the order was executed. The clerk shall
8 notify the department of the date on which the order was
9 executed.

10 8. Upon receipt of the court order for impoundment or
11 immobilization and seizure of the motor vehicle, if the agency
12 responsible for carrying out the order determines that the
13 motor vehicle is to be impounded, the agency shall review the
14 value of the vehicle in relation to the costs associated with
15 the period of impoundment of the motor vehicle specified in
16 the order. If the agency determines that the costs of
17 impoundment of the motor vehicle exceed the actual wholesale
18 value of the motor vehicle, the agency may treat the vehicle
19 as an abandoned vehicle pursuant to section 321.89. If the
20 agency elects to treat the motor vehicle as abandoned, the
21 agency shall notify the registered owner of the motor vehicle
22 that the vehicle shall be deemed abandoned and shall be sold
23 in the manner provided in section 321.89 if payment of the
24 total cost of impoundment is not received within twenty-one
25 days of the mailing of the notice. The agency shall provide
26 documentation regarding the valuation of the vehicle and the
27 costs of impoundment. This paragraph shall not apply to
28 vehicles that are immobilized pursuant to this section or if
29 subsection 14 or 15 applies.

30 9. The department shall destroy license plates received
31 under this section and shall not authorize the release of the
32 vehicle or the issuance of new license plates for the vehicle
33 until the period of impoundment or immobilization has expired,
34 and the fee and costs assessed under subsection 9 have been
35 paid. The fee for issuance of new license plates and

1 certificates of registration shall be the same as for the
2 replacement of lost, mutilated, or destroyed license plates
3 and certificates of registration.

4 10. Except where the person who is convicted of operating
5 while intoxicated and being a second or subsequent offender is
6 not lawfully in possession of the motor vehicle, the owner of
7 any motor vehicle that is impounded or immobilized under this
8 section shall be assessed a fee of one hundred dollars plus
9 the cost of any expenses for towing, storage, and any other
10 costs of impounding or immobilizing the motor vehicle, to be
11 paid to the clerk of the district court. The person or agency
12 responsible for carrying out the order shall inform the court
13 of the costs of towing, storage, and any other costs of
14 impounding or immobilizing the motor vehicle. Upon payment of
15 the fee and costs, the clerk shall forward a copy of the
16 receipt to the department.

17 11. If a law enforcement agency impounds or immobilizes a
18 motor vehicle, the amount of the fee and expenses deposited
19 with the clerk shall be paid by the clerk to the law
20 enforcement agency responsible for executing the order to
21 reimburse the agency for costs incurred for impoundment or
22 immobilization equipment and, if required, in sending officers
23 to search for and locate the vehicle specified in the
24 impoundment or immobilization order.

25 12. A motor vehicle which is subject to an order of
26 impoundment or immobilization that is operated on a street or
27 highway in this state during the period of impoundment or
28 immobilization shall be seized and forfeited to the state
29 under chapter 809.

30 13. Once the period of impoundment or immobilization has
31 expired, the owner of the motor vehicle shall have thirty days
32 to claim the motor vehicle and pay the fees and charges
33 imposed under this section. If the owner or the owner's
34 designee has not claimed the vehicle and paid the fees and
35 charges imposed under this section within seven days from the

1 date of expiration of the period, the clerk shall send written
2 notification to the motor vehicle owner, at the owner's last
3 known address, notifying the owner of the date of expiration
4 of the period of impoundment or immobilization and of the
5 period in which the motor vehicle must be claimed. If the
6 motor vehicle owner fails to claim the motor vehicle and pay
7 the fees and charges imposed within the thirty-day period, the
8 motor vehicle shall be forfeited to the state under chapter
9 809.

10 14. a. During the period of impoundment or
11 immobilization, a person convicted of the offense of operating
12 while intoxicated which resulted in the impoundment or
13 immobilization shall not sell or transfer the title of the
14 motor vehicle which is subject to the order of impoundment or
15 immobilization. The person convicted of the offense of
16 operating while intoxicated shall also not purchase another
17 motor vehicle or register any motor vehicle during the period
18 of impoundment or immobilization. Violation of this paragraph
19 is a serious misdemeanor.

20 b. If, during the period of impoundment or immobilization,
21 the title to the motor vehicle which is the subject of the
22 order is transferred by the foreclosure of a chattel mortgage,
23 a sale upon execution, the cancellation of a conditional sales
24 contract, or an order of a court, the court which enters the
25 order that permits transfer of the title shall notify the
26 department of the transfer of the title. The department shall
27 enter notice of the transfer of the title to the motor vehicle
28 in the previous owner's vehicle registration record.

29 15. Notwithstanding the requirements of this section, if
30 the owner of the motor vehicle is not the person who is
31 convicted of the offense which resulted in the issuance of the
32 order of impoundment or immobilization or the owner of the
33 motor vehicle is a motor vehicle rental or leasing company,
34 the owner, the owner's designee, or the rental or leasing
35 company shall be permitted to submit a claim for return of the

1 motor vehicle within twenty-four hours from receipt of the
2 order for impoundment or immobilization. Upon learning the
3 address or phone number of a rental or leasing company which
4 owns a motor vehicle, the peace officer, county attorney, or
5 attorney general shall immediately contact the company to
6 inform the company that the vehicle is available for return to
7 the company. The vehicle shall be returned to the owner,
8 owner's designee, or rental or leasing company and the order
9 for impoundment or immobilization shall be rescinded with
10 respect to the particular motor vehicle, if the owner or
11 owner's designee can prove to the satisfaction of the court
12 that the owner did not know or should not have known that the
13 vehicle was to be used in the commission of the offense of
14 operating while intoxicated, or if the rental or leasing
15 company did not know, should not have known, and did not
16 consent to the operation of the motor vehicle used in the
17 commission of the offense of operating while intoxicated. For
18 purposes of this section, unless the person convicted of the
19 offense which results in the imposition of the order for
20 impoundment or immobilization is not in lawful possession of
21 the motor vehicle used in the commission of the offense, an
22 owner of a motor vehicle shall be presumed to know that the
23 vehicle was to be used by the person who is convicted of the
24 offense, in the commission of the offense of operating while
25 intoxicated.

26 16. Notwithstanding the requirements of this section, the
27 holder of a security interest in a vehicle which is impounded
28 or immobilized pursuant to this section or forfeited in the
29 manner provided in chapter 809 shall be notified of the
30 impoundment, immobilization, or forfeiture within seventy-two
31 hours of the seizure of the vehicle and shall have the right
32 to claim the motor vehicle without payment of any fees or
33 surcharges unless the value of the vehicle exceeds the value
34 of the security interest held by the creditor.

35 17. Notwithstanding the requirements of this section, any

1 of the following persons may make application to the court for
2 permission to operate a motor vehicle, which is impounded or
3 immobilized pursuant to this section, during the period of im-
4 poundment or immobilization, if the applicant's motor vehicle
5 license or operating privilege has not been suspended, denied,
6 or revoked, and an ignition interlock device of a type
7 approved by the commissioner of public safety is installed in
8 the motor vehicle prior to operation:

9 a. A person, other than the person who committed the
10 offense which resulted in the impoundment or immobilization,
11 who is not a member of the immediate family of the person who
12 committed the offense but is a joint owner of the motor
13 vehicle.

14 b. A member of the immediate family of the person who
15 committed the offense which resulted in the impoundment or
16 immobilization, if the member demonstrates that the motor
17 vehicle that is subject to the order for impoundment or
18 immobilization is the only motor vehicle possessed by the
19 family.

20 For purposes of this section, "a member of the immediate
21 family" means a spouse, child, or parent of the person who
22 committed the offense.

23 18. The impoundment, immobilization, or forfeiture of a
24 motor vehicle under this chapter does not constitute loss of
25 use of a motor vehicle for purposes of any contract of
26 insurance.

27 Sec. 12. Section 321J.5, Code 1995, is amended to read as
28 follows:

29 321J.5 PRELIMINARY SCREENING TEST.

30 1. When a peace officer has reasonable grounds to believe
31 that a either of the following have occurred, the peace
32 officer may request that the operator provide a sample of the
33 operator's breath for a preliminary screening test using a
34 device approved by the commissioner of public safety for that
35 purpose:

1 a. A motor vehicle operator may be violating or has
2 violated section 321J.27 or the 321J.2A.

3 b. The operator has been involved in a motor vehicle
4 collision resulting in injury or death, ~~the peace officer may~~
5 ~~request the operator to provide a sample of the operator's~~
6 ~~breath for a preliminary screening test using a device~~
7 ~~approved by the commissioner of public safety for that~~
8 purpose.

9 2. The results of this preliminary screening test may be
10 used for the purpose of deciding whether an arrest should be
11 made and or whether to request a chemical test authorized in
12 this chapter, but shall not be used in any court action except
13 to prove that a chemical test was properly requested of a
14 person pursuant to this chapter.

15 Sec. 13. Section 321J.6, subsection 1, unnumbered
16 paragraph 1, Code 1995, is amended to read as follows:

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

30 Sec. 14. Section 321J.6, subsection 1, Code 1995, is
31 amended by adding the following new paragraph:

32 NEW PARAGRAPH. g. The preliminary breath screening test
33 was administered and it indicated an alcohol concentration of
34 .02 or more but less than .10 and the person is under the age
35 of twenty-one.

1 Sec. 15. Section 321J.8, Code 1995, is amended to read as
2 follows:

3 321J.8 STATEMENT OF OFFICER.

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

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

10 2. If the person submits to the test and the results
11 indicate an alcohol concentration as defined in section 321J.1
12 of .10 or more, or the person is under the age of twenty-one
13 and the results indicate an alcohol concentration of .02 or
14 more, but less than .10, the person's motor vehicle license or
15 nonresident operating privilege will be revoked by the
16 department as required by and for the applicable period
17 specified under section 321J.12.

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

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

29 Sec. 16. Section 321J.9, Code 1995, is amended to read as
30 follows:

31 321J.9 REFUSAL TO SUBMIT -- REVOCATION.

32 1. If a person refuses to submit to the chemical testing,
33 a test shall not be given, but the department, upon the
34 receipt of the peace officer's certification, subject to
35 penalty for perjury, that the officer had reasonable grounds

1 to believe the person to have been operating a motor vehicle
2 in violation of section 321J.2 or 321J.2A, that specified
3 conditions existed for chemical testing pursuant to section
4 321J.6, and that the person refused to submit to the chemical
5 testing, shall revoke the person's motor vehicle license and
6 any nonresident operating privilege for ~~a-period~~ the following
7 periods of two time:

8 a. Two hundred forty days if the person has no previous
9 revocation within the previous six years under this chapter;
10 and five

11 b. Five hundred forty days if the person has one or more
12 previous revocations within the previous six years under this
13 chapter; ~~or if.~~

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

24 3. If the person is a resident without a license or permit
25 to operate a motor vehicle in this state, the department shall
26 deny to the person the issuance of a license or permit for the
27 same period a license or permit would be revoked, and deny
28 issuance of a temporary restricted license for the same period
29 of ineligibility for receipt of a temporary restricted
30 license, subject to review as provided in this chapter.

31 4. The effective date of revocation shall be twenty ten
32 days after the department has mailed notice of revocation to
33 the person by certified mail or, on behalf of the department,
34 a peace officer offering or directing the administration of a
35 chemical test may serve immediate notice of intention to

1 revoke and of revocation on a person who refuses to permit
2 chemical testing. If the peace officer serves that immediate
3 notice, the peace officer shall take the Iowa license or
4 permit of the driver, if any, and issue a temporary license
5 effective for only ~~twenty~~ ten days. The peace officer shall
6 immediately send the person's license to the department along
7 with the officer's certificate indicating the person's refusal
8 to submit to chemical testing.

9 Sec. 17. Section 321J.12, Code 1995, is amended to read as
10 follows:

11 321J.12 TEST RESULT REVOCATION.

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

23 a. One hundred eighty days if the person has had no
24 revocation within the previous six years under this chapter,
25 ~~and one~~

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

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

1 the revocation.

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

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

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

30 6. The results of a chemical test may not be used as the
31 basis for a revocation of a person's motor vehicle license or
32 nonresident operating privilege if the alcohol concentration
33 indicated by the chemical test minus the established margin of
34 error inherent in the device or method used to conduct the
35 chemical test does not equal an alcohol concentration of .10

1 or more for violations under section 321J.2 or of .02 or more
2 for violations of section 321J.2A.

3 Sec. 18. Section 321J.13, subsections 1 through 5, Code
4 1995, are amended to read as follows:

5 1. Notice of revocation of a person's motor vehicle
6 license or operating privilege served pursuant to section
7 321J.9 or 321J.12 shall include a form accompanied by a
8 preaddressed envelope on which the person served may indicate
9 by a checkmark if the person only wishes to request a
10 temporary restricted license only after the mandatory
11 ineligibility period for issuance of a temporary restricted
12 license has ended, or if the person wishes a hearing to
13 contest the revocation. The form shall clearly state on its
14 face that the form must be completed and returned within
15 ~~thirty~~ ten days of receipt or the person's right to a hearing
16 to contest the revocation is foreclosed. The form shall also
17 be accompanied by a statement of the operation of and the
18 person's rights under this chapter.

19 2. The department shall grant the person an opportunity to
20 be heard within forty-five days of receipt of a request for a
21 hearing if the request is made not later than ~~thirty~~ ten days
22 after receipt of notice of revocation served pursuant to
23 section 321J.9 or 321J.12. The hearing shall be before the
24 department in the county where the alleged events occurred,
25 unless the director and the person agree that the hearing may
26 be held in some other county, or the hearing may be held by
27 telephone conference at the discretion of the agency
28 conducting the hearing. The hearing may be recorded and its
29 scope shall be limited to the issues of whether a peace
30 officer had reasonable grounds to believe that the person was
31 operating a motor vehicle in violation of section 321J.2 or
32 section 321J.2A and either of the following:

33 a. Whether the person refused to submit to the test or
34 tests.

35 b. Whether a test was administered and the test results

1 indicated an alcohol concentration as defined in section
2 321J.1 of .10 or more or whether a test was administered and
3 the test results indicated an alcohol concentration as defined
4 in section 321J.1 of .02 or more pursuant to section 321J.2A.

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

19 4. A person whose motor vehicle license or operating
20 privilege has been or is being revoked under section 321J.9 or
21 321J.12 may reopen a department hearing on the revocation if
22 the person submits a petition stating that new evidence has
23 been discovered which provides grounds for rescission of the
24 revocation, or prevail at the hearing to rescind the
25 revocation, if the person submits a petition stating that a
26 criminal action on a charge of a violation of section 321J.2
27 filed as a result of the same circumstances which resulted in
28 the revocation has resulted in a decision in which the court
29 has held that the peace officer did not have reasonable
30 grounds to believe that a violation of section 321J.2 or
31 321J.2A had occurred to support a request for or to administer
32 a chemical test or which has held the chemical test to be
33 otherwise inadmissible or invalid. Such a decision by the
34 court is binding on the department and the department shall
35 rescind the revocation.

1 5. The department shall stay the revocation of a person's
2 motor vehicle license or operating privilege for the period
3 that the person is contesting the revocation under this
4 section or section 321J.14 if it is shown to the satisfaction
5 of the department that the new evidence is material and that
6 there were valid reasons for failure to present it in the
7 contested case proceeding before the department. However, a
8 stay shall not be granted for violations of section 321J.2A.

9 Sec. 19. Section 321J.15, Code 1995, is amended to read as
10 follows:

11 321J.15 EVIDENCE IN ANY ACTION.

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

23 Sec. 20. Section 321J.16, Code 1995, is amended to read as
24 follows:

25 321J.16 PROOF OF REFUSAL ADMISSIBLE.

26 If a person refuses to submit to a chemical test, proof of
27 refusal is admissible in any civil or criminal action or
28 proceeding arising out of acts alleged to have been committed
29 while the person was operating a motor vehicle in violation of
30 section 321J.2 or 321J.2A.

31 Sec. 21. Section 321J.20, subsections 1 and 2, Code 1995,
32 are amended to read as follows:

33 1. The department may, on application, issue a temporary
34 restricted license to a person whose motor vehicle license is
35 revoked under this chapter allowing the person to drive to and

1 from the person's home and specified places at specified times
2 which can be verified by the department and which are required
3 by the person's full-time or part-time employment, continuing
4 health care or the continuing health care of another who is
5 dependent upon the person, continuing education while enrolled
6 in an educational institution on a part-time or full-time
7 basis and while pursuing a course of study leading to a
8 diploma, degree, or other certification of successful
9 educational completion, substance abuse treatment, and court-
10 ordered community service responsibilities if the person's
11 motor vehicle license has not been revoked under section
12 321J.4, 321J.9, or 321J.12 within the previous six years and
13 if any of the following apply:

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

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

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

30 However, a temporary restricted license may be issued if
31 the person's motor vehicle license is revoked under section
32 321J.9, and the revocation is a second revocation under this
33 chapter, and the first three hundred and sixty sixty-five days
34 of the revocation have expired.

35 2. This section does not apply to a person whose license

1 was revoked under section 321J.2A or section 321J.4,
2 subsection 3 or 5, or to a person whose license is suspended
3 or revoked for another reason.

4 Sec. 22. Section 805.8, subsection 10, Code 1995, is
5 amended by adding the following new paragraph:

6 NEW PARAGRAPH. c. For violations of section 321.284, the
7 scheduled fine is fifty dollars.

8 Sec. 23. Section 809.1, subsection 4, Code 1995, is
9 amended to read as follows:

10 4. The definitions contained in subsections 1 through 3
11 shall not apply to violations of chapter 321 ~~or 321J.~~

12 Sec. 24. REPEAL. Section 321J.4A, Code 1995, is repealed.

13 Sec. 25. IMPLEMENTATION OF ACT -- LEGISLATIVE INTENT.
14 Section 25B.2, subsection 3, shall not apply to this Act.
15 However, it is the intent of the general assembly that the
16 fees and funds generated as a result of the passage of this
17 Act be used to cover the costs associated with the additional
18 duties imposed.

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SENATE FILE 446

H-3642

1 Amend Senate File 446, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 23, by inserting after line 3 the
4 following:

5 "Sec. _____. Section 462A.14, Code 1995, is amended
6 by striking the section and inserting in lieu thereof
7 the following:

8 462A.14 DEFINITIONS -- OPERATING WHILE
9 INTOXICATED.

10 1. As used in this section and sections 462A.14A
11 and 462A.14B:

12 2. "Alcohol concentration" means the number of
13 grams of alcohol per any of the following:

14 a. One hundred milliliters of blood.

15 b. Two hundred ten liters of breath.

16 c. Sixty-seven milliliters of urine.

17 3. "Alcoholic beverage" includes alcohol, wine,
18 spirits, beer, or any other beverage which contains
19 ethyl alcohol and is fit for human consumption.

20 a. "Chemical test" means an analysis of a person's
21 blood, breath, urine, or other bodily substance for
22 the determination of the presence of alcohol, a
23 controlled substance, or a drug.

24 b. "Controlled substance" means controlled
25 substance as defined in section 124.101.

26 c. "Motorboat" means a watercraft, as defined in
27 section 462A.2, that is propelled by an engine.

28 d. "Peace officer" means peace officer as defined
29 in section 801.4.

30 e. "Prima facie evidence of intoxication" includes
31 evidence that, at the time of an alleged violation, a
32 person had an alcohol concentration equal to or in
33 excess of the level specified in section 321J.2,
34 subsection 1, paragraph "b".

35 f. "Relevant evidence of intoxication" includes
36 evidence that, at the time of the alleged violation, a
37 person had an alcohol concentration of at least one-
38 half, but not more than, the level specified in
39 section 321J.2, subsection 1, paragraph "b".

40 g. "Sailboat" means a watercraft, as defined in
41 462A.2, that is propelled by wind through use of one
42 or more sails.

43 Sec. _____. NEW SECTION. 462A.14A OPERATING A
44 MOTORBOAT OR SAILBOAT WHILE INTOXICATED.

45 1. A person commits the offense of operating a
46 motorboat or sailboat while intoxicated if the person
47 operates a motorboat or sailboat in either of the
48 following conditions:

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

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1 substances.

2 b. While having an alcohol concentration as
3 defined in section 462A.14 of .10 or more.

4 2. A person who violates this section commits:

5 a. A serious misdemeanor for the first offense and
6 shall be imprisoned in the county jail for not less
7 than forty-eight hours to be served as ordered by the
8 court, less credit for any time the person was
9 confined in a jail or detention facility following
10 arrest, and assessed a fine of not less than five
11 hundred dollars. As an alternative to a portion or
12 all of the fine, the court may order the person to
13 perform not more than two hundred hours of unpaid
14 community service.

15 b. A person who violates this section and who has
16 previously been convicted of a violation of this
17 section within the previous six years commits an
18 aggravated misdemeanor and shall be imprisoned in the
19 county jail or a community-based correctional facility
20 for not less than seven days, which sentence shall not
21 be suspended notwithstanding section 901.5, subsection
22 3, and section 907.3, subsection 3, and assessed a
23 fine of not less than seven hundred fifty dollars.

24 c. A person who violates this section commits a
25 class "D" felony and shall be imprisoned in the county
26 jail for a determinate sentence of not more than one
27 year but not less than thirty days, which shall not be
28 suspended, notwithstanding section 901.5, subsection
29 3, and section 907.3, subsection 3, or committed to
30 the custody of the director of the department of
31 corrections, and assessed a fine of not less than
32 seven hundred fifty dollars in either of the following
33 cases:

34 (1) If the person has twice been previously
35 convicted of a violation of this section within the
36 previous six years.

37 (2) If the offense results in serious bodily
38 injury to another person and the court determines that
39 the person who committed the offense caused the
40 serious bodily injury.

41 d. A person who violates this section commits a
42 class "C" felony if the crime results in the death of
43 another person and the court determines that the
44 person who committed the offense caused the death.

45 e. A person who operates a motorboat or sailboat
46 after the person has been ordered, pursuant to this
47 section, not to operate a motorboat or sailboat
48 commits a simple misdemeanor.

49 3. a. Except for a penalty imposed under
50 subsection 2, paragraph "e", in addition to a criminal

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1 penalty imposed for a misdemeanor under this section,
2 the court shall order the person not to operate a
3 motorboat or sailboat for a period of time not to
4 exceed one year.

5 b. In addition to a criminal penalty imposed for a
6 felony under this section, the court shall order the
7 person not to operate a motorboat or sailboat for a
8 period of time not to exceed two years.

9 4. a. A person who operates a motorboat or
10 sailboat in waters over which this state has
11 jurisdiction impliedly consents to submit to the
12 chemical test provisions of this section as a
13 condition of operating a motorboat or sailboat in this
14 state. If a person refuses to submit to a chemical
15 test under this section, the court shall order the
16 person not to operate a motorboat or sailboat for a
17 period of time not to exceed one year.

18 b. A peace officer who has probable cause to
19 believe that a person has committed an offense under
20 this section shall offer the person the opportunity to
21 submit to a chemical test. However, it is not
22 necessary for the peace officer to offer a chemical
23 test to an unconscious person. A peace officer may
24 offer a person more than one chemical test under this
25 section. However, all tests must be administered
26 within two hours after the officer had probable cause
27 to believe the person violated this section. A person
28 must submit to each chemical test offered by a peace
29 officer in order to comply with the implied consent
30 provisions of this section.

31 c. If the chemical test results in relevant
32 evidence that the person is intoxicated, the person
33 may be arrested for an offense under this section. If
34 the chemical test results in prima facie evidence that
35 the person is intoxicated, the person shall be
36 arrested for an offense under this section.

37 d. A person who refuses to submit to a chemical
38 test may be arrested for an offense under this
39 section.

40 e. At any proceeding under this section, a
41 person's refusal to submit to a chemical test is
42 admissible into evidence.

43 f. If a person refuses to submit to a chemical
44 test under this section, the peace officer shall
45 inform the person that the person's refusal will
46 result in the suspension of the person's motorboat or
47 sailboat operation privileges.

48 5. At any proceeding concerning an offense under
49 this section, evidence of the amount by weight of
50 alcohol that was in the blood of the person charged

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1 with the offense at the time of the alleged violation,
2 as shown by an analysis of the person's blood, breath,
3 urine, or other bodily substance, is admissible.

4 Sec. ____ . NEW SECTION. 462A.14B PRELIMINARY
5 SCREENING TEST.

6 When a peace officer has reasonable grounds to
7 believe that a motorboat or sailboat operator may be
8 violating or has violated section 462A.14A, or the
9 operator has been involved in a motorboat or sailboat
10 collision resulting in injury or death, the peace
11 officer may request the operator to provide a sample
12 of the operator's breath for a preliminary screening
13 test using a device approved by the commission of
14 public safety for that purpose. The results of this
15 preliminary screening test may be used for the purpose
16 of deciding whether an arrest should be made and
17 whether to request a chemical test authorized in
18 section 462A.14A, but shall not be used in any court
19 action except to prove that a chemical test was
20 properly requested of a person pursuant to this
21 section and section 462A.14A.

22 Sec. ____ . NEW SECTION. 462A.14C ARREST AND
23 CONVICTION STATISTICS.

24 The department shall collect and maintain
25 statistics on the number of arrests and convictions
26 for violations of section 462A.14A that occur each
27 year.

28 Sec. ____ . Section 462A.23, subsection 2, paragraph
29 b, Code 1995, is amended by striking the paragraph and
30 inserting in lieu thereof the following:

31 b. Operating a motorboat or sailboat while
32 intoxicated, or manipulating waterskis, surfboard, or
33 similar device while in an intoxicated condition or
34 under the influence of a narcotic drug."

35 2. Page 23, by inserting after line 11 the
36 following:

37 "Sec. ____ . Section 912.1, subsection 2, Code 1995,
38 is amended to read as follows:

39 2. "Crime" means conduct that occurs or is
40 attempted in this state, poses a substantial threat of
41 personal injury or death, and is punishable as a
42 felony or misdemeanor, or would be so punishable but
43 for the fact that the person engaging in the conduct
44 lacked the capacity to commit the crime under the laws
45 of this state. "Crime" does not include conduct
46 arising out of the ownership, maintenance, or use of a
47 motor vehicle, motorcycle, motorized bicycle, train,
48 boat, or aircraft except for violations of section
49 321.261, 321.277, 321J.2, ~~462A.14~~ 462A.14A, or 707.6A,
50 or when the intention is to cause personal injury or

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1 death. A license revocation under section 321J.9 or
2 321J.12 shall be considered by the department as
3 evidence of a violation of section 321J.2 for the
4 purposes of this chapter."

5 3. Title page, line 2, by inserting after the
6 word "motor vehicle" the following: ", a motorboat,
7 or sailboat,".

8 4. Title page, line 6, by inserting after the
9 word "revocation" the following: "of motor vehicle
10 licenses".

11 5. By numbering and renumbering as necessary.

By GARMAN of Story

H-3642 FILED MARCH 30, 1995

W.....(p.1495)

SENATE FILE 446

H-3810

1 Amend Senate File 446, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 23, by inserting after line 3 the
4 following:

5 "Sec. ____ . NEW SECTION. 321M.1 IMPOUNDMENT OF
6 MOTOR VEHICLES USED TO COMMIT CERTAIN OFFENSES --
7 LIABILITY OF OWNER PERMITTING ILLEGAL USE OF VEHICLE.

8 1. If a person whose motor vehicle license or
9 operating privilege has been suspended, denied,
10 revoked, or barred under section 321.209, 321.210,
11 321.210A, 321.560, 321A.4, 321A.5, 321A.17, or
12 321J.17, for an offense which arose out of the same
13 facts and circumstances that resulted in the person's
14 conviction of a violation of section 321J.2, or has
15 been revoked under section 321J.9 or 321J.12 or
16 section 707.6A, subsection 1, paragraph "a", operates
17 a motor vehicle in violation of section 321.218,
18 321.561, 321A.32, or 321J.21, and the person knew or
19 should have known that the person's license has been
20 suspended, denied, revoked, or barred, the motor
21 vehicle which is operated shall be impounded as
22 provided in this chapter. If the person who operates
23 the motor vehicle is the owner of the motor vehicle,
24 the person shall not be permitted to regain possession
25 of the motor vehicle until the period of revocation or
26 suspension has ended. The department of
27 transportation shall send a copy of the notice
28 advising a person convicted of a violation of section
29 321.218, 321.561, 321A.32, or 321J.21, of the date of
30 expiration of the period of revocation or suspension
31 to the court which enters the order of conviction.

32 2. A person who owns a motor vehicle, who is not
33 the person who operates the motor vehicle under
34 subsection 1, but who knows of, should have known of,
35 or gives consent to the operation of the motor vehicle
36 in violation of subsection 1, shall be jointly liable
37 for any damage caused by the person who operated the
38 motor vehicle, as well as for any costs associated
39 with the seizure or impoundment of the motor vehicle.

40 Sec. ____ . NEW SECTION. 321M.2 NOTICE OF SEIZURE.

41 Upon the arrest of a person for a violation of
42 section 321.218, 321.561, 321A.32, or 321J.21, the
43 motor vehicle used to commit the offense shall be
44 seized. The officer taking possession of the motor
45 vehicle shall make a written inventory of the motor
46 vehicle and any property contained in the vehicle and
47 deliver a copy of the inventory to the person from
48 whom it was seized and the county attorney. If the
49 person operating the motor vehicle is not the
50 registered owner or titleholder of the vehicle, the

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1 officer shall also cause a copy of the inventory to be
2 delivered to the registered owner or titleholder, or
3 both the registered owner and titleholder if they are
4 different persons. The county attorney shall file a
5 copy of the inventory with the district court in the
6 county in which the motor vehicle was seized, along
7 with a list of the names and addresses of the persons
8 who have received copies of the inventory.

9 Sec. ____ . NEW SECTION. 321M.3 APPLICATIONS FOR
10 RETURN OF VEHICLE.

11 Any person claiming right to immediate possession
12 of the vehicle may make application for the vehicle's
13 return in the office of the clerk of the district
14 court for the county in which the property was seized.
15 The application shall state the nature of the
16 claimant's interest and the grounds upon which the
17 claimant seeks to have the property immediately
18 returned. If no grounds are set out in the
19 application for a return, the court may enter judgment
20 on the pleadings without further hearing.

21 Sec. ____ . NEW SECTION. 321M.4 HEARING -- APPEAL.

22 1. Unless the person making application is the
23 person who operated the motor vehicle in violation of
24 section 321.218, 321.561, 321A.32, or 321J.21, an
25 application for the return of the motor vehicle shall
26 be set for hearing not less than five nor more than
27 thirty days after the filing of the application and
28 shall be tried to the court. If the person making
29 application is the person who operated the motor
30 vehicle, the hearing on the application shall be held
31 not less than five nor more than thirty days after
32 receipt of the copy of the notice of the period of
33 revocation, suspension, or bar from the department of
34 transportation. All claims to the same motor vehicle
35 shall be heard in one proceeding unless it is shown
36 that the proceeding would result in prejudice to one
37 or more parties. If the total value of the motor
38 vehicle sought to be returned is less than ten
39 thousand dollars, the proceeding may be conducted by a
40 magistrate or a district associate judge, and appeals
41 are to be conducted under the same procedures
42 applicable to appeals of small claims. In all other
43 cases, the hearing shall be conducted by a district
44 judge. Appeals from judgments entered by a district
45 judge shall be made within thirty days after the entry
46 of a judgment order. The motor vehicle shall remain
47 in impoundment during the course of the appeal.

48 2. The following persons shall be entitled to
49 immediate return of the motor vehicle without payment
50 of costs associated with seizure or impoundment of the

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1 vehicle:

2 a. The owner of the motor vehicle, if the person
3 is not the same person as the person who operated the
4 motor vehicle and the motor vehicle was operated
5 without the owner's knowledge or consent, either
6 express or implied.

7 b. A motor vehicle rental or leasing agency, if
8 the agency did not or could not have known that the
9 person operating the motor vehicle did not have a
10 valid motor vehicle license or operating privileges
11 and the operation of the motor vehicle in violation of
12 section 321.218, 321.561, 321A.32, or 321J.21
13 constitutes a violation of the rental or leasing
14 agreement.

15 c. A person who owns the motor vehicle and who is
16 charged but is not convicted of the violation of
17 section 321.218, 321.561, 321A.32, or 321J.21, which
18 resulted in the seizure and impoundment of the motor
19 vehicle under this chapter.

20 3. A person who owns a motor vehicle which has
21 been seized and impounded under this chapter who knew
22 or should have known, or who gave consent to the
23 operation of the motor vehicle by the person whose
24 motor vehicle license was suspended or revoked, shall
25 be entitled to the return of the motor vehicle upon
26 payment of the costs, as well as the costs of the
27 hearing on the application, which are associated with
28 the seizure and impoundment of the motor vehicle.

29 4. A person who owns a motor vehicle which has
30 been seized and impounded under this chapter who has
31 been convicted of a violation of section 321.218,
32 321.561, 321A.32, or 321J.21 shall be entitled to the
33 return of the motor vehicle upon expiration of the
34 period of revocation or suspension and upon payment of
35 the costs, as well as the costs of the hearing on the
36 application, which are associated with the seizure and
37 impoundment of the motor vehicle."

38 2. Title page, line 15, by inserting after the
39 word "offender," the following: "providing for the
40 impoundment of motor vehicles which are driven by
41 persons whose licenses are suspended, revoked, or
42 barred for or arising out of an operating-while-
43 intoxicated violation,".

44 3. By renumbering as necessary.

By WITT of Black Hawk
WELTER of Jones

H-3810 FILED APRIL 10, 1995

WITHDRAWN (p. 1495)

H-3867

- 1 Amend Senate File 446, as amended, passed, and
2 reprinted by the Senate, as follows:
- 3 1. Page 3, by striking lines 32 through 35 and
4 inserting the following: "and."
- 5 2. Page 4, by striking lines 23 through 27 and
6 inserting the following: "~~for-the-occurrence-from~~
7 ~~which-the-arrest-arose.~~ The court shall immediately
8 require".
- 9 3. Page 5, line 22, by striking the word "the"
10 and inserting the following: "any".
- 11 4. Page 6, line 2, by striking the word "the" and
12 inserting the following: "any".
- 13 5. Page 6, line 13, by striking the word "the"
14 and inserting the following: "any".
- 15 6. Page 6, line 33, by striking the word "the"
16 and inserting the following: "any applicable".
- 17 7. Page 16, by striking lines 14 through 18 and
18 inserting the following:
19 "2. A person whose motor".
- 20 8. Page 16, line 28, by inserting after the word
21 "period" the following: "of time as any applicable
22 period".
- 23 9. Page 17, by striking lines 28 through 32 and
24 inserting the following:
25 "2. A person whose license or".
- 26 10. Page 19, line 10, by striking the word "the"
27 and inserting the following: "any applicable".
- 28 11. Page 22, line 15, by striking the word "the"
29 and inserting the following: "any applicable".
- 30 12. Page 22, line 24, by striking the word "the"
31 and inserting the following: "any applicable".
- 32 13. Page 22, line 28, by striking the word "the"
33 and inserting the following: "any applicable".

By WISE of Lee
LARKIN of Lee

H-3867 FILED APRIL 11, 1995

Last (p. 1494)

McKean
Giannetto
Vilsack
Fraise
Halvorsen
Beuttger
Maddox

SSB-243

Judiciary

Succeeded By
S. HF

SENATE FILE 446
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON GIANNETTO)

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

A BILL FOR

1 An Act relating to the possession or use of alcohol while
2 operating a motor vehicle by requiring the administrative
3 revocation of driving privileges of persons under the age of
4 twenty-one who operate a motor vehicle with an alcohol
5 concentration of .02 or more, denying issuance of temporary
6 restricted licenses during the period of revocation, including
7 the revocation under implied consent provisions, providing for
8 civil penalties, excluding the revocation from application of
9 certain motor vehicle financial responsibility requirements,
10 providing for minimum periods of license revocation, providing
11 a scheduled fine for possession of an open alcohol container
12 while operating a motor vehicle, and other related matters.

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

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1 Section 1. Section 123.28, unnumbered paragraph 2, Code
2 1995, is amended by striking the unnumbered paragraph.

3 Sec. 2. Section 321.12, Code 1995, is amended by adding
4 the following new unnumbered paragraph:

5 NEW UNNUMBERED PARAGRAPH. The director shall destroy any
6 operating records pertaining to revocations for violations of
7 section 321J.2A which are more than twelve years old. The
8 twelve-year period shall commence with the date the revocation
9 of the person's operating privileges becomes effective. This
10 paragraph shall not apply to records of revocations which
11 pertain to violations of section 321J.2A by persons operating
12 a commercial motor vehicle.

13 Sec. 3. NEW SECTION. 321.284 OPEN CONTAINERS IN MOTOR
14 VEHICLES.

15 A person driving a motor vehicle shall not knowingly
16 possess in a motor vehicle upon a public street or highway an
17 open or unsealed bottle, can, jar, or other receptacle
18 containing an alcoholic beverage, wine, or beer with the
19 intent to consume the alcoholic beverage, wine, or beer while
20 the motor vehicle is upon a public street or highway.
21 Evidence that an open or unsealed receptacle containing an
22 alcoholic beverage, wine, or beer was found during an
23 authorized search in the glove compartment, utility
24 compartment, console, front passenger seat, or any unlocked
25 portable device and within the immediate reach of the driver
26 while the motor vehicle is upon a public street or highway is
27 evidence from which the court or jury may infer that the
28 driver intended to consume the alcoholic beverage, wine, or
29 beer while upon the public street or highway if the inference
30 is supported by corroborative evidence. However, an open or
31 unsealed receptacle containing an alcoholic beverage, wine, or
32 beer may be transported at any time in the trunk of the motor
33 vehicle or in some other area of the interior of the motor
34 vehicle not designed or intended to be occupied by the driver
35 and not readily accessible to the driver while the motor

1 vehicle is in motion. A person convicted of a violation of
2 this paragraph is guilty of a simple misdemeanor punishable as
3 a scheduled violation under section 805.8, subsection 10,
4 paragraph "c".

5 Sec. 4. Section 321A.17, subsection 5, Code 1995, is
6 amended to read as follows:

7 5. An individual applying for a motor vehicle license
8 following a period of suspension or revocation under section
9 321.209, subsection 8, section 321.210, subsection 1,
10 paragraph "d", or section 321.210A, 321.213B, 321.216B, or
11 321.513, ~~or~~ following a period of suspension under section
12 321.194, or following a period of revocation under section
13 321J.2A, is not required to maintain proof of financial
14 responsibility under this section.

15 Sec. 5. NEW SECTION. 321J.2A PERSONS UNDER THE AGE OF
16 TWENTY-ONE.

17 A person who is under the age of twenty-one shall not
18 operate a motor vehicle while having an alcohol concentration,
19 as defined under section 321J.1, of .02 or more. The motor
20 vehicle license or nonresident operation privilege of a person
21 who is under the age of twenty-one and who operates a motor
22 vehicle while having an alcohol concentration of .02 or more
23 shall be revoked by the department for the period of time
24 specified under section 321J.12. A revocation under this
25 section shall not preclude a prosecution or conviction under
26 any applicable criminal provisions of this chapter. However,
27 if the person is convicted of a criminal offense under section
28 321J.2, the revocation imposed under this section shall be
29 superseded by any revocation imposed as a result of the
30 conviction.

31 In any proceeding regarding a revocation under this
32 section, evidence of the results of analysis of a specimen of
33 the defendant's blood, breath, or urine is admissible upon
34 proof of a proper foundation. The alcohol concentration
35 established by the results of an analysis of a specimen of the

1 defendant's blood, breath, or urine withdrawn within two hours
2 after the defendant was driving or in physical control of a
3 motor vehicle is presumed to be the alcohol concentration at
4 the time of driving or being in physical control of the motor
5 vehicle.

6 Sec. 6. Section 321J.4, subsections 1 and 2, Code 1995,
7 are amended to read as follows:

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

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

32 2. If the court defers judgment pursuant to section 907.3
33 for a violation of section 321J.2, and if the defendant's
34 motor vehicle license or nonresident operating privilege has
35 not been revoked under section 321J.9 or 321J.12, or has not

1 otherwise been revoked for the occurrence from which the
2 arrest arose, the court shall order the department to revoke
3 the defendant's motor vehicle license or nonresident operating
4 privilege for a period of not less than thirty days nor more
5 than ninety days ~~if the defendant's motor vehicle license or~~
6 ~~nonresident operating privilege has not been revoked under~~
7 ~~section 321J.9 or 321J.12 or has not otherwise been revoked~~
8 ~~for the occurrence from which the arrest arose.~~ The defendant
9 shall not be eligible for any temporary restricted license for
10 at least thirty days after the effective date of the
11 revocation if a test was obtained and for at least ninety days
12 if a test was refused. The court shall immediately require
13 the defendant to surrender to it all Iowa licenses or permits
14 held by the defendant, which the court shall forward to the
15 department with a copy of the order deferring judgment.

16 Sec. 7. Section 321J.4, subsection 3, paragraph a, Code
17 1995, is amended to read as follows:

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

28 Sec. 8. Section 321J.4, subsections 4, 5, and 8, Code
29 1995, are amended to read as follows:

30 4. Upon a plea or verdict of guilty of a violation of
31 section 321J.2 which involved a personal injury, the court
32 shall determine in open court, from consideration of the
33 information in the file and any other evidence the parties may
34 submit, whether a serious injury was sustained by any person
35 other than the defendant and, if so, whether the defendant's

1 conduct in violation of section 321J.2 caused the serious
2 injury. If the court so determines, the court shall order the
3 department to revoke the defendant's motor vehicle license or
4 nonresident operating privilege for a period of one year in
5 addition to any other period of suspension or revocation. The
6 defendant shall not be eligible for any temporary restricted
7 license until the minimum period of ineligibility has expired
8 under section 321J.4, 321J.9, 321J.12, or 321J.20. The
9 defendant shall surrender to the court any Iowa license or
10 permit and the court shall forward it to the department with a
11 copy of the order for revocation.

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

27 8. A person whose motor vehicle license has either been
28 revoked under this chapter, or revoked or suspended under
29 chapter 321 solely for violations of this chapter, or who has
30 been determined to be a habitual offender under chapter 321
31 based solely on violations of this chapter, and who is not
32 eligible for a temporary restricted license under this chapter
33 may petition the court upon the expiration of the minimum
34 period of ineligibility for a temporary restricted license
35 provided for under section 321J.4, 321J.9, 321J.12, or 321J.20

1 for an order to the department to require the department to
2 issue a temporary restricted license to the person
3 notwithstanding section 321.560. Upon the filing of a
4 petition for a temporary restricted license under this
5 section, the clerk of the district court in the county where
6 the violation that resulted in the revocation occurred shall
7 send notice of the petition to the department and the
8 prosecuting attorney. The department and the prosecuting
9 attorney shall each be given an opportunity to respond to and
10 request a hearing on the petition. The court shall determine
11 if the temporary restricted license is necessary for the
12 person to maintain the person's present employment. However,
13 a temporary restricted license shall not be ordered or issued
14 for violations of section 321J.2A or to persons under the age
15 of twenty-one who commit violations under section 321J.2. If
16 the court determines that the temporary restricted license is
17 necessary for the person to maintain the person's present
18 employment, and that the minimum period of ineligibility for
19 receipt of a temporary license has expired, the court shall
20 order the department to issue to the person a temporary
21 restricted license conditioned upon the person's certification
22 to the court of the installation of approved ignition
23 interlock devices in all motor vehicles that it is necessary
24 for the person to operate to maintain the person's present
25 employment. Section 321.561 does not apply to a person
26 operating a motor vehicle in the manner permitted under this
27 subsection. If the person operates a motor vehicle which does
28 not have an approved ignition interlock device or if the
29 person tampers with or circumvents an ignition interlock
30 device, in addition to other penalties provided, the person's
31 temporary restricted license shall be revoked. A person
32 holding a temporary restricted license issued under this
33 subsection shall not operate a commercial motor vehicle, as
34 defined in section 321.1, on a highway if a commercial
35 driver's license is required for the person to operate the

1 commercial motor vehicle.

2 Sec. 9. Section 321J.5, Code 1995, is amended to read as
3 follows:

4 321J.5 PRELIMINARY SCREENING TEST.

5 1. When a peace officer has reasonable grounds to believe
6 that a either of the following have occurred, the peace
7 officer may request that the operator provide a sample of the
8 operator's breath for a preliminary screening test using a
9 device approved by the commissioner of public safety for that
10 purpose:

11 a. A motor vehicle operator may be violating or has
12 violated section 321J.27 or the 321J.2A.

13 b. ~~The operator has been involved in a motor vehicle~~
14 ~~collision resulting in injury or death, the peace officer may~~
15 ~~request the operator to provide a sample of the operator's~~
16 ~~breath for a preliminary screening test using a device~~
17 ~~approved by the commissioner of public safety for that~~
18 ~~purpose.~~

19 2. The results of this preliminary screening test may be
20 used for the purpose of deciding whether an arrest should be
21 made and or whether to request a chemical test authorized in
22 this chapter, but shall not be used in any court action except
23 to prove that a chemical test was properly requested of a
24 person pursuant to this chapter.

25 Sec. 10. Section 321J.6, subsection 1, unnumbered
26 paragraph 1, Code 1995, is amended to read as follows:

27 A person who operates a motor vehicle in this state under
28 circumstances which give reasonable grounds to believe that
29 the person has been operating a motor vehicle in violation of
30 section 321J.2 or 321J.2A is deemed to have given consent to
31 the withdrawal of specimens of the person's blood, breath, or
32 urine and to a chemical test or tests of the specimens for the
33 purpose of determining the alcohol concentration or presence
34 of drugs, subject to this section. The withdrawal of the body
35 substances and the test or tests shall be administered at the

1 written request of a peace officer having reasonable grounds
2 to believe that the person was operating a motor vehicle in
3 violation of section 321J.2 or 321J.2A, and if any of the
4 following conditions exist:

5 Sec. 11. Section 321J.6, subsection 1, Code 1995, is
6 amended by adding the following new paragraph:

7 NEW PARAGRAPH. g. The preliminary breath screening test
8 was administered and it indicated an alcohol concentration of
9 .02 or more but less than .10 and the person is under the age
10 of twenty-one.

11 Sec. 12. Section 321J.8, Code 1995, is amended to read as
12 follows:

13 321J.8 STATEMENT OF OFFICER.

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

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

20 2. If the person submits to the test and the results
21 indicate an alcohol concentration as defined in section 321J.1
22 of .10 or more, or the person is under the age of twenty-one
23 and the results indicate an alcohol concentration of .02 or
24 more, but less than .10, the person's motor vehicle license or
25 nonresident operating privilege will be revoked by the
26 department as required by and for the applicable period
27 specified under section 321J.12.

28 3. If the person is operating a commercial motor vehicle
29 as defined in section 321.1 and either refuses to submit to
30 the test or submits to the test and the results indicate an
31 alcohol concentration of 0.04 or more, the person is
32 disqualified from operating a commercial motor vehicle for the
33 applicable period under section 321.208 in addition to any
34 revocation of the person's motor vehicle license or
35 nonresident operating privilege which may be applicable under

1 this chapter.

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

4 Sec. 13. Section 321J.9, Code 1995, is amended to read as
5 follows:

6 321J.9 REFUSAL TO SUBMIT -- REVOCATION.

7 1. If a person refuses to submit to the chemical testing,
8 a test shall not be given, but the department, upon the
9 receipt of the peace officer's certification, subject to
10 penalty for perjury, that the officer had reasonable grounds
11 to believe the person to have been operating a motor vehicle
12 in violation of section 321J.2 or 321J.2A, that specified
13 conditions existed for chemical testing pursuant to section
14 321J.6, and that the person refused to submit to the chemical
15 testing, shall revoke the person's motor vehicle license and
16 any nonresident operating privilege for ~~a-period~~ the following
17 periods of two time:

18 a. Two hundred forty days if the person has no previous
19 revocation within the previous six years under this chapter;
20 and five

21 b. Five hundred forty days if the person has one or more
22 previous revocations within the previous six years under this
23 chapter, ~~or if.~~

24 2. A person whose motor vehicle license or nonresident
25 operating privileges are revoked for two hundred forty days
26 under subsection 1, paragraph "a", shall not be eligible for a
27 temporary restricted license for at least ninety days after
28 the effective date of the revocation. A person whose motor
29 vehicle license or nonresident operating privileges are
30 revoked for five hundred forty days under subsection 1,
31 paragraph "b", shall not be eligible for a temporary
32 restricted license for at least one year after the effective
33 date of the revocation.

34 3. If the person is a resident without a license or permit
35 to operate a motor vehicle in this state, the department shall

1 deny to the person the issuance of a license or permit for the
2 same period a license or permit would be revoked, and deny
3 issuance of a temporary restricted license for the same period
4 of ineligibility for receipt of a temporary restricted
5 license, subject to review as provided in this chapter.

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

19 Sec. 14. Section 321J.12, Code 1995, is amended to read as
20 follows:

21 321J.12 TEST RESULT REVOCATION.

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

33 a. One hundred eighty days if the person has had no
34 revocation within the previous six years under this chapter₇.
35 and-one

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

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

12 3. The effective date of the revocation shall be twenty
13 ten days after the department has mailed notice of revocation
14 to the person by certified mail. The peace officer who
15 requested or directed the administration of the chemical test
16 may, on behalf of the department, serve immediate notice of
17 revocation on a person whose test results indicated an alcohol
18 concentration of .10 or more.

19 4. If the peace officer serves that immediate notice, the
20 peace officer shall take the person's Iowa license or permit,
21 if any, and issue a temporary license valid only for twenty
22 ten days. The peace officer shall immediately send the
23 person's driver's license to the department along with the
24 officer's certificate indicating that the test results
25 indicated an alcohol concentration of .10 or more.

26 5. Upon certification, subject to penalty of perjury, by
27 the peace officer that there existed reasonable grounds to
28 believe that the person had been operating a motor vehicle in
29 violation of section 321J.2A, that there existed one or more
30 of the necessary conditions for chemical testing described in
31 section 321J.6, subsection 1, and that the person submitted to
32 chemical testing and the test results indicated an alcohol
33 concentration as defined in section 321J.1 of .02 or more but
34 less than .10, the department shall revoke the person's motor
35 vehicle license or operating privilege for a period of thirty

1 days if the person has had no revocations within the previous
2 six years under section 321J.2A, and for a period of ninety
3 days if the person has had one or more previous revocations
4 within the previous six years under section 321J.2A.

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

13 Sec. 15. Section 321J.13, subsections 1 through 5, Code
14 1995, are amended to read as follows:

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

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

1 be held in some other county, or the hearing may be held by
2 telephone conference at the discretion of the agency
3 conducting the hearing. The hearing may be recorded and its
4 scope shall be limited to the issues of whether a peace
5 officer had reasonable grounds to believe that the person was
6 operating a motor vehicle in violation of section 321J.2 or
7 section 321J.2A and either of the following:

8 a. Whether the person refused to submit to the test or
9 tests.

10 b. Whether a test was administered and the test results
11 indicated an alcohol concentration as defined in section
12 321J.1 of .10 or more or whether a test was administered and
13 the test results indicated an alcohol concentration as defined
14 in section 321J.1 of .02 or more pursuant to section 321J.2A.

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

29 4. A person whose motor vehicle license or operating
30 privilege has been or is being revoked under section 321J.9 or
31 321J.12 may reopen a department hearing on the revocation if
32 the person submits a petition stating that new evidence has
33 been discovered which provides grounds for rescission of the
34 revocation, or prevail at the hearing to rescind the
35 revocation, if the person submits a petition stating that a

1 criminal action on a charge of a violation of section 321J.2
2 filed as a result of the same circumstances which resulted in
3 the revocation has resulted in a decision in which the court
4 has held that the peace officer did not have reasonable
5 grounds to believe that a violation of section 321J.2 or
6 321J.2A had occurred to support a request for or to administer
7 a chemical test or which has held the chemical test to be
8 otherwise inadmissible or invalid. Such a decision by the
9 court is binding on the department and the department shall
10 rescind the revocation.

11 5. The department shall stay the revocation of a person's
12 motor vehicle license or operating privilege for the period
13 that the person is contesting the revocation under this
14 section or section 321J.14 if it is shown to the satisfaction
15 of the department that the new evidence is material and that
16 there were valid reasons for failure to present it in the
17 contested case proceeding before the department. However, a
18 stay shall not be granted for violations of section 321J.2A.

19 Sec. 16. Section 321J.15, Code 1995, is amended to read as
20 follows:

21 321J.15 EVIDENCE IN ANY ACTION.

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

33 Sec. 17. Section 321J.16, Code 1995, is amended to read as
34 follows:

35 321J.16 PROOF OF REFUSAL ADMISSIBLE.

1 If a person refuses to submit to a chemical test, proof of
2 refusal is admissible in any civil or criminal action or
3 proceeding arising out of acts alleged to have been committed
4 while the person was operating a motor vehicle in violation of
5 section 321J.2 or 321J.2A.

6 Sec. 18. Section 321J.20, subsections 1 and 2, Code 1995,
7 are amended to read as follows:

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

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

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

1 has expired.

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

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

10 2. This section does not apply to a person whose license
11 was revoked under section 321J.2A or section 321J.4,
12 subsection 3 or 5, or to a person whose license is suspended
13 or revoked for another reason.

14 Sec. 19. Section 805.8, subsection 10, Code 1995, is
15 amended by adding the following new paragraph:

16 NEW PARAGRAPH. c. For violations of 321.284, the
17 scheduled fine is fifty dollars.

18 EXPLANATION

19 This bill moves language prohibiting the possession of open
20 receptacles containing alcoholic beverages in a motor vehicle
21 from chapter 123, which regulates alcoholic beverages, to
22 chapter 321, which governs motor vehicles, and provides that
23 violations are punishable by a scheduled fine of \$50.

24 The bill is intended to comply with federal section 410
25 criteria established for states with comprehensive drunk
26 driving prevention programs. Federal section 410 criteria
27 require the establishment of periods of "hard" revocation and
28 the completion of the license revocation hearing process
29 within an abbreviated period of time. States meeting such
30 criteria, as determined by the national highway traffic safety
31 administration (NHTSA), are eligible to receive grant funds
32 (65 percent of current 402 moneys) to enhance their drunk
33 driving prevention programs.

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

1 Minimum revocation periods of 30 days are established if
2 the person submitted to and failed a chemical test resulting
3 in an indication of an alcohol concentration of .10 or more,
4 90 days if the person refuses to submit to a chemical test,
5 and one year for a person who had had one or more previous
6 revocations under chapter 321J within the previous six years.

7 This bill requires that the local prosecuting attorney and
8 the state department of transportation be given notice by the
9 clerk of the district court of, and the opportunity to request
10 a hearing on, a petition for a temporary restricted license
11 pursuant to section 321J.4.

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

18 Under the bill persons subject to judicial, as well as
19 administrative, revocation are subject to "hard" suspension
20 provisions.

21 This bill also provides for the administrative revocation
22 of the motor vehicle license or nonresident operating
23 privileges of persons under the age of 21 who are found to be
24 operating a motor vehicle while having an alcohol
25 concentration level of .02 or greater, but less than .10. The
26 revocations are for 30 days for a first offense and 90 days
27 for a second or subsequent offense. Under the bill, once the
28 period of revocation ends the individual is not subject to the
29 motor vehicle financial responsibility provisions, but if the
30 person drives while the person's license is revoked, criminal
31 penalties will apply. A person whose license or operating
32 privilege is revoked under the new provisions is required to
33 pay the civil penalty to regain the person's license or
34 privilege. The implied consent provisions and the two-hour
35 limitation on chemical test results do apply to the requests

1 for chemical testing under the .02 standard. Under the bill,
2 persons whose licenses are revoked for being over the .02
3 level are not eligible to receive temporary restricted
4 licenses during the period of revocation. Provision is made
5 for destruction of records relating to the revocation under
6 the new provisions after the revocation is 12 years old.

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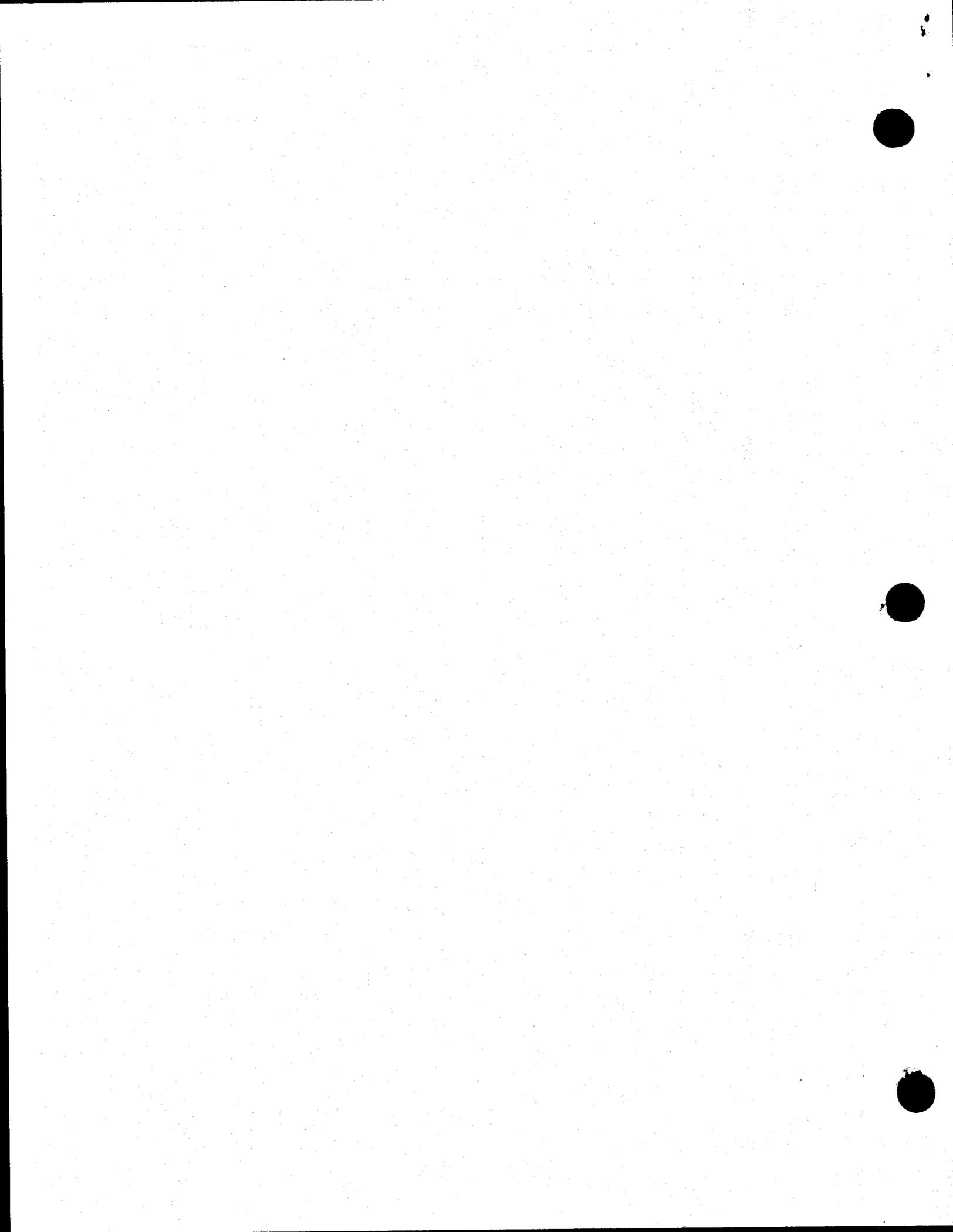
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SENATE FILE 446

AN ACT

RELATING TO THE POSSESSION OR USE OF ALCOHOL WHILE OPERATING A MOTOR VEHICLE BY REQUIRING THE ADMINISTRATIVE REVOCATION OF DRIVING PRIVILEGES OF PERSONS UNDER THE AGE OF TWENTY-ONE WHO OPERATE A MOTOR VEHICLE WITH AN ALCOHOL CONCENTRATION OF .02 OR MORE, DENYING ISSUANCE OF TEMPORARY RESTRICTED LICENSES DURING THE PERIOD OF REVOCATION, INCLUDING THE REVOCATION UNDER IMPLIED CONSENT PROVISIONS, PROVIDING FOR CIVIL PENALTIES, EXCLUDING THE REVOCATION FROM APPLICATION OF CERTAIN MOTOR VEHICLE FINANCIAL RESPONSIBILITY REQUIREMENTS, PROVIDING FOR MINIMUM PERIODS OF LICENSE REVOCATION, PROVIDING A SCHEDULED FINE FOR POSSESSION OF AN OPEN ALCOHOL CONTAINER WHILE OPERATING A MOTOR VEHICLE, PROVIDING FOR THE IMPOUNDMENT OR IMMOBILIZATION OF MOTOR VEHICLES DRIVEN OR OWNED BY PERSON CONVICTED OF OPERATING WHILE INTOXICATED AND BEING A SECOND OR SUBSEQUENT OFFENDER, PROVIDING CRIMINAL PENALTIES, AND OTHER RELATED MATTERS.

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

Section 1. Section 123.28, unnumbered paragraph 2, Code 1995, is amended by striking the unnumbered paragraph.

Sec. 2. Section 321.12, Code 1995, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The director shall destroy any operating records pertaining to revocations for violations of section 321J.2A which are more than twelve years old. The twelve-year period shall commence with the date the revocation of the person's operating privileges becomes effective. This paragraph shall not apply to records of revocations which pertain to violations of section 321J.2A by persons operating a commercial motor vehicle.

Sec. 3. Section 321.89, subsection 1, paragraph b, Code 1995, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (6) A vehicle that has been impounded pursuant to section 321J.4B by order of the court and whose owner has not paid the impoundment fees after notification by the person or agency responsible for carrying out the impoundment order.

Sec. 4. Section 321.218, subsection 1, Code 1995, is amended to read as follows:

1. A person whose motor vehicle license or operating privilege has been denied, canceled, suspended, or revoked as provided in this chapter, and who operates a motor vehicle upon the highways of this state while the license or privilege is denied, canceled, suspended, or revoked, commits a simple serious misdemeanor.

Sec. 5. NEW SECTION. 321.284 OPEN CONTAINERS IN MOTOR VEHICLES.

A person driving a motor vehicle shall not knowingly possess in a motor vehicle upon a public street or highway an open or unsealed bottle, can, jar, or other receptacle containing an alcoholic beverage, wine, or beer with the intent to consume the alcoholic beverage, wine, or beer while the motor vehicle is upon a public street or highway. Evidence that an open or unsealed receptacle containing an alcoholic beverage, wine, or beer was found during an authorized search in the glove compartment, utility compartment, console, front passenger seat, or any unlocked portable device and within the immediate reach of the driver while the motor vehicle is upon a public street or highway is evidence from which the court or jury may infer that the driver intended to consume the alcoholic beverage, wine, or beer while upon the public street or highway if the inference is supported by corroborative evidence. However, an open or unsealed receptacle containing an alcoholic beverage, wine, or beer may be transported at any time in the trunk of the motor

vehicle or in some other area of the interior of the motor vehicle not designed or intended to be occupied by the driver and not readily accessible to the driver while the motor vehicle is in motion. A person convicted of a violation of this paragraph is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8, subsection 10, paragraph "c".

Sec. 6. Section 321A.17, subsection 5, Code 1995, is amended to read as follows:

5. An individual applying for a motor vehicle license following a period of suspension or revocation under section 321.209, subsection 8, section 321.210, subsection 1, paragraph "d", or section 321.210A, 321.213B, 321.216B, or 321.513, or following a period of suspension under section 321.194, or following a period of revocation under section 321J.2A, is not required to maintain proof of financial responsibility under this section.

Sec. 7. NEW SECTION. 321J.2A PERSONS UNDER THE AGE OF TWENTY-ONE.

A person who is under the age of twenty-one shall not operate a motor vehicle while having an alcohol concentration, as defined under section 321J.1, of .02 or more. The motor vehicle license or nonresident operating privilege of a person who is under the age of twenty-one and who operates a motor vehicle while having an alcohol concentration of .02 or more shall be revoked by the department for the period of time specified under section 321J.12. A revocation under this section shall not preclude a prosecution or conviction under any applicable criminal provisions of this chapter. However, if the person is convicted of a criminal offense under section 321J.2, the revocation imposed under this section shall be superseded by any revocation imposed as a result of the conviction.

In any proceeding regarding a revocation 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. 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.

Sec. 8. Section 321J.4, subsections 1 and 2, Code 1995, are amended to read as follows:

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

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

2. If the court defers judgment pursuant to section 907.3 for a violation of section 321J.2, and if the defendant's motor vehicle license or nonresident operating privilege has not been revoked under section 321J.9 or 321J.12, or has not otherwise been revoked for the occurrence from which the arrest arose, the court shall order the department to revoke the defendant's motor vehicle license or nonresident operating privilege for a period of not less than thirty days nor more than ninety days ~~if the defendant's motor vehicle license or nonresident operating privilege has not been revoked under section 321J.9 or 321J.12 or has not otherwise been revoked for the occurrence from which the arrest arose~~. The defendant shall not be eligible for any temporary restricted license for at least thirty days after the effective date of the revocation if a test was obtained and for at least ninety days if a test was refused. The court shall immediately require the defendant to surrender to it all Iowa licenses or permits held by the defendant, which the court shall forward to the department with a copy of the order deferring judgment.

Sec. 9. Section 321J.4, subsection 3, paragraph a, Code 1995, is amended to read as follows:

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

Sec. 10. Section 321J.4, subsections 4, 5, and 8, Code 1995, are amended to read as follows:

4. Upon a plea or verdict of guilty of a violation of section 321J.2 which involved a personal injury, the court

shall determine in open court, from consideration of the information in the file and any other evidence the parties may submit, whether a serious injury was sustained by any person other than the defendant and, if so, whether the defendant's conduct in violation of section 321J.2 caused the serious injury. If the court so determines, the court shall order the department to revoke the defendant's motor vehicle license or nonresident operating privilege for a period of one year in addition to any other period of suspension or revocation. The defendant shall not be eligible for any temporary restricted license until the minimum period of ineligibility has expired under section 321J.4, 321J.9, 321J.12, or 321J.20. The defendant shall surrender to the court any Iowa license or permit and the court shall forward it to the department with a copy of the order for revocation.

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

8. A person whose motor vehicle license has either been revoked under this chapter, or revoked or suspended under chapter 321 solely for violations of this chapter, or who has been determined to be a habitual offender under chapter 321 based solely on violations of this chapter, and who is not

eligible for a temporary restricted license under this chapter may petition the court upon the expiration of the minimum period of ineligibility for a temporary restricted license provided for under section 321J.4, 321J.9, 321J.12, or 321J.20 for an order to the department to require the department to issue a temporary restricted license to the person notwithstanding section 321.560. Upon the filing of a petition for a temporary restricted license under this section, the clerk of the district court in the county where the violation that resulted in the revocation occurred shall send notice of the petition to the department and the prosecuting attorney. The department and the prosecuting attorney shall each be given an opportunity to respond to and request a hearing on the petition. The court shall determine if the temporary restricted license is necessary for the person to maintain the person's present employment. However, a temporary restricted license shall not be ordered or issued for violations of section 321J.2A or to persons under the age of twenty-one who commit violations under section 321J.2. If the court determines that the temporary restricted license is necessary for the person to maintain the person's present employment, and that the minimum period of ineligibility for receipt of a temporary license has expired, the court shall order the department to issue to the person a temporary restricted license conditioned upon the person's certification to the court of the installation of approved ignition interlock devices in all motor vehicles that it is necessary for the person to operate to maintain the person's present employment. Section 321.561 does not apply to a person operating a motor vehicle in the manner permitted under this subsection. If the person operates a motor vehicle which does not have an approved ignition interlock device or if the person tampers with or circumvents an ignition interlock device, in addition to other penalties provided, the person's temporary restricted license shall be revoked. A person

holding a temporary restricted license issued under this subsection shall not operate a commercial motor vehicle, as defined in section 321.1, on a highway if a commercial driver's license is required for the person to operate the commercial motor vehicle.

Sec. 11. NEW SECTION. 321J.4B MOTOR VEHICLE IMPOUNDMENT OR IMMOBILIZATION -- PENALTY.

1. If a person is convicted of a second, third, or subsequent offense of operating while intoxicated, the court shall order that any motor vehicles owned by the person and used to commit the offense and any other motor vehicles used by the person in the commission of the offense be impounded or immobilized. For purposes of this section, "immobilized" means the installation of a device that completely prevents a motor vehicle from being operated, or the installation of an ignition interlock device, of a type approved by the commissioner of public safety, in a motor vehicle.

2. The order shall specify all of the following:

- a. The motor vehicles that are subject to the order.
- b. The period of impoundment or immobilization.
- c. The person or agency responsible for carrying out the order requiring impoundment or immobilization of the motor vehicle. If a vehicle which is to be impounded or immobilized is in the custody of a law enforcement agency, the court shall designate that agency as the responsible agency. If the vehicle is not in the custody of a law enforcement agency, the person or agency responsible for carrying out the order shall be any person deemed appropriate by the court, including but not limited to a law enforcement agency with jurisdiction over the area in which the residence of the vehicle owner is located. The person or agency responsible for carrying out the order shall determine whether the motor vehicle shall be impounded or immobilized.

3. The period of impoundment or immobilization of a motor vehicle under this section shall be the period of license

revocation imposed upon the person convicted of the offense or one hundred eighty days, whichever period is longer. The impoundment or immobilization period shall commence on the day that the vehicle is actually impounded or immobilized.

4. The clerk of the district court shall send a copy of the order to the department, the person convicted of the offense, the motor vehicle owner if the owner is not the person convicted, and the person or agency responsible for executing the order for impoundment or immobilization.

5. If the vehicle to be impounded or immobilized is in the custody of a law enforcement agency, the agency shall immobilize or impound the vehicle upon receipt of the order, seize the motor vehicle's license plates and registration, and shall send or deliver the vehicle's license plates and registration to the department.

6. If the vehicle to be impounded or immobilized is not in the custody of a law enforcement agency, the person or agency designated in the order as the person or agency responsible for executing the order shall, upon receipt of the order, promptly locate the vehicle specified in the order, seize the motor vehicle and the license plates, and send or deliver the vehicle's license plates to the department.

7. If the vehicle is located at a place other than the place at which the impoundment or immobilization is to be carried out, the person or agency responsible for executing the order shall arrange for the vehicle to be moved to the place of impoundment or immobilization. When the vehicle is found, is impounded or immobilized, and is at the place of impoundment or immobilization, the person or agency responsible for executing the order shall notify the clerk of the date on which the order was executed. The clerk shall notify the department of the date on which the order was executed.

8. Upon receipt of the court order for impoundment or immobilization and seizure of the motor vehicle, if the agency

responsible for carrying out the order determines that the motor vehicle is to be impounded, the agency shall review the value of the vehicle in relation to the costs associated with the period of impoundment of the motor vehicle specified in the order. If the agency determines that the costs of impoundment of the motor vehicle exceed the actual wholesale value of the motor vehicle, the agency may treat the vehicle as an abandoned vehicle pursuant to section 321.89. If the agency elects to treat the motor vehicle as abandoned, the agency shall notify the registered owner of the motor vehicle that the vehicle shall be deemed abandoned and shall be sold in the manner provided in section 321.89 if payment of the total cost of impoundment is not received within twenty-one days of the mailing of the notice. The agency shall provide documentation regarding the valuation of the vehicle and the costs of impoundment. This paragraph shall not apply to vehicles that are immobilized pursuant to this section or if subsection 15 or 16 applies.

9. The department shall destroy license plates received under this section and shall not authorize the release of the vehicle or the issuance of new license plates for the vehicle until the period of impoundment or immobilization has expired, and the fee and costs assessed under subsection 10 have been paid. The fee for issuance of new license plates and certificates of registration shall be the same as for the replacement of lost, mutilated, or destroyed license plates and certificates of registration.

10. Except where the person who is convicted of operating while intoxicated and being a second or subsequent offender is not lawfully in possession of the motor vehicle, the owner of any motor vehicle that is impounded or immobilized under this section shall be assessed a fee of one hundred dollars plus the cost of any expenses for towing, storage, and any other costs of impounding or immobilizing the motor vehicle, to be paid to the clerk of the district court. The person or agency

responsible for carrying out the order shall inform the court of the costs of towing, storage, and any other costs of impounding or immobilizing the motor vehicle. Upon payment of the fee and costs, the clerk shall forward a copy of the receipt to the department.

11. If a law enforcement agency impounds or immobilizes a motor vehicle, the amount of the fee and expenses deposited with the clerk shall be paid by the clerk to the law enforcement agency responsible for executing the order to reimburse the agency for costs incurred for impoundment or immobilization equipment and, if required, in sending officers to search for and locate the vehicle specified in the impoundment or immobilization order.

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

13. Once the period of impoundment or immobilization has expired, the owner of the motor vehicle shall have thirty days to claim the motor vehicle and pay the fees and charges imposed under this section. If the owner or the owner's designee has not claimed the vehicle and paid the fees and charges imposed under this section within seven days from the date of expiration of the period, the clerk shall send written notification to the motor vehicle owner, at the owner's last known address, notifying the owner of the date of expiration of the period of impoundment or immobilization and of the period in which the motor vehicle must be claimed. If the motor vehicle owner fails to claim the motor vehicle and pay the fees and charges imposed within the thirty-day period, the motor vehicle shall be forfeited to the state under chapter 809.

14. a. During the period of impoundment or immobilization, a person convicted of the offense of operating

while intoxicated which resulted in the impoundment or immobilization shall not sell or transfer the title of the motor vehicle which is subject to the order of impoundment or immobilization. The person convicted of the offense of operating while intoxicated shall also not purchase another motor vehicle or register any motor vehicle during the period of impoundment or immobilization. Violation of this paragraph is a serious misdemeanor.

b. If, during the period of impoundment or immobilization, the title to the motor vehicle which is the subject of the order is transferred by the foreclosure of a chattel mortgage, a sale upon execution, the cancellation of a conditional sales contract, or an order of a court, the court which enters the order that permits transfer of the title shall notify the department of the transfer of the title. The department shall enter notice of the transfer of the title to the motor vehicle in the previous owner's vehicle registration record.

15. Notwithstanding the requirements of this section, if the owner of the motor vehicle is not the person who is convicted of the offense which resulted in the issuance of the order of impoundment or immobilization or the owner of the motor vehicle is a motor vehicle rental or leasing company, the owner, the owner's designee, or the rental or leasing company shall be permitted to submit a claim for return of the motor vehicle within twenty-four hours from receipt of the order for impoundment or immobilization. Upon learning the address or phone number of a rental or leasing company which owns a motor vehicle, the peace officer, county attorney, or attorney general shall immediately contact the company to inform the company that the vehicle is available for return to the company. The vehicle shall be returned to the owner, owner's designee, or rental or leasing company and the order for impoundment or immobilization shall be rescinded with respect to the particular motor vehicle, if the owner or owner's designee can prove to the satisfaction of the court

that the owner did not know or should not have known that the vehicle was to be used in the commission of the offense of operating while intoxicated, or if the rental or leasing company did not know, should not have known, and did not consent to the operation of the motor vehicle used in the commission of the offense of operating while intoxicated. For purposes of this section, unless the person convicted of the offense which results in the imposition of the order for impoundment or immobilization is not in lawful possession of the motor vehicle used in the commission of the offense, an owner of a motor vehicle shall be presumed to know that the vehicle was to be used by the person who is convicted of the offense, in the commission of the offense of operating while intoxicated.

16. Notwithstanding the requirements of this section, the holder of a security interest in a vehicle which is impounded or immobilized pursuant to this section or forfeited in the manner provided in chapter 809 shall be notified of the impoundment, immobilization, or forfeiture within seventy-two hours of the seizure of the vehicle and shall have the right to claim the motor vehicle without payment of any fees or surcharges unless the value of the vehicle exceeds the value of the security interest held by the creditor.

17. Notwithstanding the requirements of this section, any of the following persons may make application to the court for permission to operate a motor vehicle, which is impounded or immobilized pursuant to this section, during the period of impoundment or immobilization, if the applicant's motor vehicle license or operating privilege has not been suspended, denied, or revoked, and an ignition interlock device of a type approved by the commissioner of public safety is installed in the motor vehicle prior to operation:

a. A person, other than the person who committed the offense which resulted in the impoundment or immobilization, who is not a member of the immediate family of the person who

committed the offense but is a joint owner of the motor vehicle.

b. A member of the immediate family of the person who committed the offense which resulted in the impoundment or immobilization, if the member demonstrates that the motor vehicle that is subject to the order for impoundment or immobilization is the only motor vehicle possessed by the family.

For purposes of this section, "a member of the immediate family" means a spouse, child, or parent of the person who committed the offense.

18. The impoundment, immobilization, or forfeiture of a motor vehicle under this chapter does not constitute loss of use of a motor vehicle for purposes of any contract of insurance.

Sec. 12. Section 321J.5, Code 1995, is amended to read as follows:

321J.5 PRELIMINARY SCREENING TEST.

1. When a peace officer has reasonable grounds to believe that a either of the following have occurred, the peace officer may request that the operator provide a sample of the operator's breath for a preliminary screening test using a device approved by the commissioner of public safety for that purpose:

a. A motor vehicle operator may be violating or has violated section 321J.27 or the 321J.2A.

~~b. The operator has been involved in a motor vehicle collision resulting in injury or death, the peace officer may request the operator to provide a sample of the operator's breath for a preliminary screening test using a device approved by the commissioner of public safety for that purpose.~~

2. The results of this preliminary screening test may be used for the purpose of deciding whether an arrest should be made and or whether to request a chemical test authorized in

this chapter, but shall not be used in any court action except to prove that a chemical test was properly requested of a person pursuant to this chapter.

Sec. 13. Section 321J.6, subsection 1, unnumbered paragraph 1, Code 1995, 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 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. 14. Section 321J.6, subsection 1, Code 1995, is amended by adding the following new paragraph:

NEW PARAGRAPH. g. The preliminary breath screening test was administered and it indicated an alcohol concentration of .02 or more but less than .10 and the person is under the age of twenty-one.

Sec. 15. Section 321J.8, Code 1995, is amended to read as follows:

321J.8 STATEMENT OF OFFICER.

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

1. If the person refuses to submit to the test, 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.9.
2. If the person submits to the test and the results indicate an alcohol concentration as defined in 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, 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.

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

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

Sec. 16. Section 321J.9, Code 1995, is amended to read as follows:

321J.9 REFUSAL TO SUBMIT -- REVOCATION.

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

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

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

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

3. If the person is a resident without a license or permit to operate a motor vehicle in this state, the department shall deny to the person the issuance of a license or permit for the same period a license or permit would be revoked, and deny issuance of a temporary restricted license for the same period of ineligibility for receipt of a temporary restricted license, subject to review as provided in this chapter.

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

Sec. 17. Section 321J.12, Code 1995, is amended to read as follows:

321J.12 TEST RESULT REVOCATION.

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 an alcohol concentration as defined in section 321J.1 of .10 or more, the department shall revoke the person's motor vehicle license or nonresident operating privilege for a period the following periods of one time:

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

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

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

3. The effective date of the revocation shall be twenty 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 an alcohol concentration of .10 or more.

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 twenty

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 an alcohol concentration of .10 or more.

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

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 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 for violations under section 321J.2 or of .02 or more for violations of section 321J.2A.

Sec. 18. Section 321J.13, subsections 1 through 5, Code 1995, are amended to read as follows:

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

license has ended, or if the person wishes a hearing to contest the revocation. The form shall clearly state on its face that the form must be completed and returned within thirty ten days of receipt or the person's right to a hearing to contest the revocation is foreclosed. The form shall also be accompanied by a statement of the operation of and the person's rights under this chapter.

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 thirty 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 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 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.2A.

3. After the hearing the department shall order that the revocation be either rescinded or sustained. ~~If the revocation is sustained, the administrative law judge who conducted the hearing may issue a temporary restricted license to the person whose motor vehicle license or operating privilege was revoked.~~ Upon receipt of the decision of the department to sustain a revocation, the person contesting the

revocation has ten days to file a request for review of the decision by the director. The director or the director's designee shall review the decision within fifteen days and shall either rescind or sustain the revocation or order a new hearing. If the director orders a new hearing, the department shall grant the person a new hearing within thirty twenty days of the director's order.

4. A person whose motor vehicle license or operating privilege has been or is being revoked under section 321J.9 or 321J.12 may reopen a department hearing on the revocation if the person submits a petition stating that new evidence has been discovered which provides grounds for rescission of the revocation, or prevail at the hearing to rescind the revocation, if the person submits a petition stating that a criminal action on a charge of a violation of section 321J.2 filed as a result of the same circumstances which resulted in the revocation has resulted in a decision in which the court has held that the peace officer did not have reasonable grounds to believe that a violation of section 321J.2 or 321J.2A had occurred to support a request for or to administer a chemical test or which has held the chemical test to be otherwise inadmissible or invalid. Such a decision by the court is binding on the department and the department shall rescind the revocation.

5. The department shall stay the revocation of a person's motor vehicle license or operating privilege for the period that the person is contesting the revocation under this section or section 321J.14 if it is shown to the satisfaction of the department that the new evidence is material and that there were valid reasons for failure to present it in the contested case proceeding before the department. However, a stay shall not be granted for violations of section 321J.2A.

Sec. 19. Section 321J.15, Code 1995, 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 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 and methods approved by the commissioner of public safety, no further foundation is necessary for introduction of the evidence.

Sec. 20. Section 321J.16, Code 1995, is amended to read as follows:

321J.16 PROOF OF REFUSAL ADMISSIBLE.

If a person refuses to submit to a chemical test, proof of refusal is admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was operating a motor vehicle in violation of section 321J.2 or 321J.2A.

Sec. 21. Section 321J.20, subsections 1 and 2, Code 1995, are amended to read as follows:

1. The department may, on application, issue a temporary restricted license to a person whose motor vehicle license is revoked under this chapter allowing the person to drive to and from the person's home and specified places at specified times which can be verified by the department and which are required by the person's full-time or part-time employment, continuing health care or the continuing health care of another who is dependent upon the person, continuing education while enrolled in an educational institution on a part-time or full-time basis and while pursuing a course of study leading to a diploma, degree, or other certification of successful educational completion, substance abuse treatment, and court-ordered community service responsibilities if the person's motor vehicle license has not been revoked under section

321J.4, 321J.9, or 321J.12 within the previous six years and if any of the following apply:

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

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

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

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

2. This section does not apply to a person whose license was revoked under section 321J.2A or section 321J.4, subsection 3 or 5, or to a person whose license is suspended or revoked for another reason.

Sec. 22. Section 805.8, subsection 10, Code 1995, is amended by adding the following new paragraph:

NEW PARAGRAPH. c. For violations of section 321.284, the scheduled fine is fifty dollars.

Sec. 23. Section 809.1, subsection 4, Code 1995, is amended to read as follows:

4. The definitions contained in subsections 1 through 3 shall not apply to violations of chapter 321 ~~or-321J.~~

Sec. 24. REPEAL. Section 321J.4A, Code 1995, is repealed.

Sec. 25. IMPLEMENTATION OF ACT -- LEGISLATIVE INTENT.

Section 25B.2, subsection 3, shall not apply to this Act.

However, it is the intent of the general assembly that the fees and funds generated as a result of the passage of this Act be used to cover the costs associated with the additional duties imposed.

LEONARD L. BOSWELL
President of the Senate

RON J. CORBETT
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 446, Seventy-sixth General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved April 20, 1995

TERRY E. BRANSTAD
Governor