H. 3/6/96 Judiciary
H-3/25/96 Do Pass

FILED FEB 21 1996

S-5/1/96 S. Referred to W. & M.
S-5/1/96 Do Pass

SENATE FILE 2256

BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SF 2100)

Passed Senate, Date 3/5/96 (p.626) Passed House, Date 4-10-96 (p.1521)

Vote: Ayes 47 Nays 2 Vote: Ayes 84 Nays 10

Approved _____

(p.1578) Reported 5/1/96
Vote 26-23

A BILL FOR

1 An Act relating to possession or control of alcohol by persons
2 aged eighteen, nineteen, and twenty, and providing a penalty.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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S.F. 2256

TLSB 3322SV 76
jls/cf/24

S.F. 2256 H.F. _____

1 Section 1. Section 123.47A, subsection 1, Code 1995, is
2 amended to read as follows:
3 1. A person shall not sell, give, or otherwise supply
4 alcoholic liquor, wine, or beer to any person knowing or
5 having reasonable cause to believe that the person is age
6 eighteen, nineteen, or twenty. A person age eighteen,
7 nineteen, or twenty shall not purchase or ~~possess~~ attempt to
8 purchase, or individually or jointly have, alcoholic liquor,
9 wine, or beer in the person's possession or control. However,
10 a person age eighteen, nineteen, or twenty may possess
11 alcoholic liquor, wine, or beer given to the person within a
12 private home with the knowledge, presence, and consent of the
13 person's parent or guardian, or with the signed, written
14 consent of the parent or guardian specifying the date and
15 place for the consumption and displayed by the person upon
16 demand, and a person age eighteen, nineteen, or twenty may
17 handle alcoholic liquor, wine, and beer during the course of
18 the person's employment by a liquor control licensee, or wine
19 or beer permittee. A person, other than a licensee or
20 permittee, who commits a first offense under this section
21 commits a scheduled violation of section 805.8, subsection 10.
22 A person, other than a licensee or permittee, who commits a
23 second or subsequent violation of this section, commits a
24 simple misdemeanor. A licensee or permittee who violates this
25 section with respect to a person who is age nineteen or twenty
26 is guilty of a simple misdemeanor punishable by a fine of not
27 more than fifty dollars. The penalty provided under this
28 section against a licensee or permittee who violates this
29 section with respect to a person who is age nineteen or twenty
30 is the only penalty which shall be imposed against a licensee
31 or permittee who violates this section. A licensee or
32 permittee who violates this section with respect to a person
33 who is age eighteen commits a simple misdemeanor, and is
34 subject to the criminal and civil penalties provided pursuant
35 to sections 123.49 and 123.50 with respect to selling, giving,

1 or otherwise supplying alcoholic beverages, liquor, wine, or
2 beer to persons under legal age.
3 EXPLANATION
4 This bill adds language to section 123.47A that imposes
5 liability upon persons 13, 19, and 20 years old for attempting
6 to purchase alcohol and individual and joint possession or
7 control of alcohol. This additional language makes section
8 123.47A consistent with the language used in, and liability
9 imposed by, the corresponding portion of section 123.47,
10 regarding the possession and control of alcohol by persons
11 under the age of 18.
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SENATE FILE 2256

S-5881

1 Amend the amendment, S-5780, to the House
2 amendment, S-5707, to Senate File 2256, as amended,
3 passed, and reprinted by the Senate, as follows:
4 1. Page 1, by striking lines 1 through 5 and
5 inserting the following:
6 "Amend the House amendment, S-5707, to Senate File
7 2256, as passed by the Senate, as follows:
8 ___. By striking page 1, line 3, through page 2
9 line 6, and inserting the following:
10 "___. Page 1, by inserting before line 1 the
11 following:
12 "Section 1. Section 123.47, Code Supplement 1995,
13 is amended to read as follows:
14 123.47 PERSONS UNDER THE AGE OF EIGHTEEN --
15 PENALTY.
16 A person shall not sell, give, or otherwise supply
17 alcoholic liquor, wine, or beer to any person knowing
18 or having reasonable cause to believe that person to
19 be under the age of eighteen, and a person or persons
20 under the age of eighteen shall not purchase or
21 attempt to purchase, or individually or jointly have
22 alcoholic liquor, wine, or beer in their possession or
23 control; except in the case of liquor, wine, or beer
24 given or dispensed to a person under the age of
25 eighteen within a private home and with the knowledge,
26 presence, and consent of the parent or guardian, for
27 beverage or medicinal purposes or as administered to
28 the person by either a physician or dentist for
29 medicinal purposes and except to the extent that a
30 person under the age of eighteen may handle alcoholic
31 beverages, wine, and beer during the regular course of
32 the person's employment by a liquor control licensee,
33 or wine or beer permittee under this chapter. A
34 person, other than a licensee or permittee, who
35 violates this section regarding the purchase of or
36 attempt to purchase alcoholic liquor, wine, or beer
37 shall pay a ~~twenty-five~~ seventy-five dollar penalty."
38 ___. Page 1, lines 13 through 16, by striking the
39 words "or with the signed, written consent of the
40 parent or guardian specifying the date and place for
41 the consumption and displayed by the person upon
42 demand," and inserting the following: "~~or with the~~
43 ~~signed, written consent of the parent or guardian~~
44 ~~specifying the date and place for the consumption and~~
45 ~~displayed by the person upon demand,~~".
46 ___. Page 1, line 27, by striking the word
47 "fifty" and inserting the following: "~~fifty~~ one
48 hundred".
49 ___. Page 2, by inserting after line 2 the
50 following:

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Page 2

"Sec. ___. Section 123.49, subsection 1, unnumbered paragraph 1, Code 1995, is amended to read as follows:

A person shall not sell, ~~dispense, or~~ give ~~to an intoxicated person, or one simulating intoxication~~, or otherwise supply any alcoholic ~~liquor~~ beverage, wine, or beer to any other person knowing or having reasonable cause to believe the other person to be intoxicated or simulating intoxication.

Sec. ___. Section 730.5, subsection 1, Code 1995, is amended to read as follows:

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

a. "~~drug~~ Drug test" means any blood, urine, saliva, chemical, or skin tissue test conducted for the purpose of detecting the presence of a chemical substance in an individual.

b. "Preemployment" means that period of time between when a bona fide offer of employment is made and when employment begins.

Sec. ___. Section 730.5, subsection 2, Code 1995, is amended to read as follows:

2. Except as provided in subsection 7, an employer shall not require or request employees or applicants for employment to submit to a drug test as a condition of employment, preemployment, promotion, or change in status of employment. An employer shall not request, require, or conduct random or blanket drug testing of employees. However, this section does not apply to preemployment drug tests authorized for peace officers or correctional officers of the state, or to drug tests required under federal statutes or under federal regulations ~~adopted as of July 1, 1990~~, or to drug tests conducted pursuant to a nuclear regulatory commission regulation, or to drug tests conducted to determine if an employee is ineligible to receive workers' compensation under section 85.16, subsection 2.

The exemption granted by this subsection relating to drug testing pursuant to federal regulations ~~adopted as of July 1, 1990,~~ is of no effect, as it applies to a particular regulation, upon a finding by a court of competent jurisdiction, including any appeal of such finding, that the particular regulation is unconstitutional or otherwise invalid. The decision of a court invalidating any regulation exempted by this section shall not be stayed pending appeal.

Sec. ___. Section 730.5, subsection 3, paragraph a, Code 1995, is amended to read as follows:

1 a. The employer has probable cause to believe that
2 an employee's faculties are impaired on the job. For
3 purposes of this paragraph, an employer has probable
4 cause to believe that an employee's faculties are
5 impaired on the job if the employer is investigating
6 an accident in the workplace and all of the following
7 conditions are met:
8 (1) The employer has reasonable grounds to believe
9 that the employee proposed to be tested either
10 directly caused or directly contributed to the
11 accident.
12 (2) The employer has reasonable grounds to believe
13 that the employee's faculties were impaired and that
14 the impairment was likely a substantial factor in
15 causing the accident.
16 (3) The accident results in a personal injury
17 which requires medical treatment away from the
18 workplace or damage to property, including equipment,
19 in an amount reasonably estimated to exceed three
20 thousand dollars at the time of the accident.
21 (4) Prior to the accident, the employer has
22 provided the employee to be tested with written notice
23 of the employer's rules or policies regarding alcohol
24 and controlled substances and testing when a workplace
25 accident or injury occurs.
26 Sec. ___. Section 730.5, subsection 3, paragraph
27 c, Code 1995, is amended to read as follows:
28 c. The test sample withdrawn from the employee is
29 analyzed by a laboratory or testing facility that has
30 been approved under rules adopted by the department of
31 public health. The laboratory or testing facility
32 shall test for and report to the employer only the
33 presence of alcohol or illegal controlled substances
34 in any test sample. Upon request by an employee or
35 applicant for employment, the employer shall provide
36 to the employee or applicant the results of any drug
37 test. The rules adopted by the department of public
38 health shall provide for all of the following:
39 (1) The initial screening test may utilize
40 immunoassay, thin layer, high performance liquid or
41 gas chromatography, or an equivalent technology. If
42 the initial test utilizes immunoassay, the test kit
43 must meet the requirements of the United States food
44 and drug administration.
45 (2) Samples which have tested positive by initial
46 testing, with the exception of alcohol, shall be
47 confirmed by gas chromatography-mass spectrometry or
48 by a scientifically equivalent technique approved by
49 the department.
50 (3) All initial positive drug test results with

1 the exception of alcohol shall be confirmed by gas
2 chromatography-mass spectrometry or an equivalent test
3 approved by the department before being reported as
4 positive or negative.
5 (4) All initial positive test results for alcohol
6 shall be confirmed by gas chromatography, or a test
7 that is recognized by the department as an equivalent
8 test before being reported as positive or negative.
9 (5) Preliminary reports for drugs other than
10 alcohol shall not be issued in the absence of
11 confirmation by gas chromatography-mass spectrometry
12 or a scientifically equivalent test approved by the
13 department.
14 (6) Complete chain of custody procedures shall be
15 used for referred specimens. When sample volumes
16 permit, it is recommended that only an aliquot of the
17 original specimen be sent to a reference laboratory.
18 Sec. ___. Section 730.5, subsection 7, Code 1995,
19 is amended to read as follows:
20 7. ~~A drug test conducted as a part of a physical~~
21 ~~examination performed as a part of a preemployment~~
22 ~~physical or as a part of a regularly scheduled~~
23 ~~physical is only permissible~~ In addition to drug
24 testing permitted by subsection 3, drug testing of an
25 employee or applicant for employment shall also be
26 permitted under the following circumstances:
27 a. For a drug test during a preemployment
28 physical, the employer shall include notice that a
29 drug test will be part of a preemployment physical in
30 any notice or advertisement soliciting applicants for
31 employment or in the application for employment, and
32 an applicant for employment shall be personally
33 informed of the requirement for a drug test at the
34 first interview.
35 If the test sample withdrawn from the applicant is
36 analyzed by the state hygienic laboratory or a
37 laboratory certified by, and at the request of, the
38 state hygienic laboratory, the cost of the initial
39 test of the sample shall not be paid for by the
40 employer but shall be paid for by the state.
41 b. For a drug test during a regularly scheduled
42 physical, the employer shall give notice that a drug
43 test will be part of the physical at least thirty days
44 prior to the date the physical is scheduled.
45 c. For a preemployment drug test not conducted as
46 part of a preemployment physical, the employer shall
47 provide that any sample taken for analysis be taken
48 under the direct supervision of a person licensed
49 under chapter 148, 148C, 150A, or 152, and that the
50 sample shall be analyzed by the state hygienic

1 laboratory or a laboratory certified by, and at the
2 request of, the state hygienic laboratory.
3 d. An employer may require an employee, as a
4 condition of employment, to undergo testing for
5 illegal use of drugs if that employee has been
6 referred by the employer for substance abuse
7 evaluation pursuant to subsection 3, paragraph "f",
8 and treatment, if recommended by the evaluation. The
9 employee may be required to undergo testing for
10 illegal use of drugs without prior notice, but in no
11 case shall more than three tests be conducted in the
12 eighteen-month period following the employee's
13 completion of substance abuse treatment if the
14 treatment was recommended by the evaluation. A drug
15 test shall not be required of an employee by an
16 employer during drug treatment of the employee, if
17 such testing would duplicate testing of the employee
18 conducted in the course of treatment and the employee
19 has waived confidentiality as to the employer of the
20 results of such testing. An employer shall not
21 require an employee to submit to testing for illegal
22 use of drugs under this paragraph if more than
23 eighteen months have elapsed since the employee
24 successfully completed drug treatment and the employee
25 has not had a drug test conducted indicating the
26 presence of alcohol or an illegal controlled substance
27 during that eighteen-month period.
28 e. If a preemployment drug test is conducted on an
29 applicant who does not reside in this state, the
30 sample taken for analysis shall be maintained under
31 the supervision of a comparable licensed person in the
32 state in which the test is conducted and the drug test
33 shall be performed by a laboratory certified by United
34 States department of health and human services.
35 Drug testing conducted under this subsection shall
36 conform to the requirements of subsection 3,
37 paragraphs "c", "d", "e", and "f"; however, paragraph
38 "f" shall not apply to preemployment drug tests
39 ~~conducted as a part of a preemployment physical~~.
40 Sec. ___. Section 730.5, subsection 9, paragraph
41 a, Code 1995, is amended to read as follows:
42 a. A person who violates this section or who aids
43 in the violation of this section is liable to an
44 aggrieved employee or applicant for employment for
45 affirmative relief including reinstatement or hiring,
46 with or without back pay, liquidated damages in the
47 amount of one hundred dollars for each violation, or
48 any other equitable relief as the court deems
49 appropriate including attorney fees and court costs.
50 Sec. ___. Section 730.5, subsection 11, Code 1995,

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Page 6
1 is amended by striking the subsection.
2 Sec. ___. Section 730.5, Code 1995, is amended by
3 adding the following new subsections:
4 NEW SUBSECTION. 12. An employer who conducts a
5 drug test pursuant to this section shall, for each
6 fiscal year beginning on or after July 1, 1996, file
7 an annual report with the division of labor services
8 of the department of employment services, on forms
9 provided by the division, documenting separately the
10 following information for all preemployment drug
11 tests, regularly scheduled drug tests, and drug tests
12 conducted pursuant to a finding of probable cause:
13 a. The number of drug tests conducted in each
14 category.
15 b. The results of drug tests conducted in each
16 category.
17 c. The number of personal injuries, and the dollar
18 loss for property damage, arising out of the use of
19 alcohol and illegal controlled substances by
20 employees.
21 d. The cumulative direct costs of drug tests in
22 each category.
23 e. The cost of substance abuse evaluation and
24 treatment for employees in each category.
25 NEW SUBSECTION. 13. Any court ordered drug test
26 shall not in any manner affect the rights of an
27 employer to conduct a drug test under this section."
28 ___. Title page, lines 1 and 2, by striking the
29 words "by persons aged eighteen, nineteen, and
30 twenty," and inserting the following: "or drugs,".
31 ___. By renumbering, relettering, or
32 redesignating and correcting internal references as
33 necessary.""

By TOM VILSACK
RANDAL J. GIANNETTO
DENNIS H. BLACK

S-5881 FILED MAY 1, 1996
ADOPTED

(p.1577)

SENATE FILE 2256

S-5884

1 Amend the amendment, S-5780, to the House
2 amendment, S-5707, to Senate File 2256, as amended,
3 passed, and reprinted by the Senate, as follows:
4 1. Page 1, by inserting before line 1 the
5 following:
6 "Amend the House amendment, S-5707, to Senate File
7 2256, as passed by the Senate, as follows:
8 ___. By striking page 1, line 3, through page 2,
9 line 6, and inserting the following:
10 "___. Page 1, by inserting before line 1 the
11 following:
12 "Section 1. Section 123.47, Code Supplement 1995,
13 is amended to read as follows:
14 123.47 PERSONS UNDER THE AGE OF EIGHTEEN --
15 PENALTY.
16 A person shall not sell, give, or otherwise supply
17 alcoholic liquor, wine, or beer to any person knowing
18 or having reasonable cause to believe that person to
19 be under the age of eighteen, and a person or persons
20 under the age of eighteen shall not purchase or
21 attempt to purchase, or individually or jointly have
22 alcoholic liquor, wine, or beer in their possession or
23 control; except in the case of liquor, wine, or beer
24 given or dispensed to a person under the age of
25 eighteen within a private home and with the knowledge,
26 presence, and consent of the parent or guardian, for
27 beverage or medicinal purposes or as administered to
28 the person by either a physician or dentist for
29 medicinal purposes and except to the extent that a
30 person under the age of eighteen may handle alcoholic
31 beverages, wine, and beer during the regular course of
32 the person's employment by a liquor control licensee,
33 or wine or beer permittee under this chapter. A
34 person, other than a licensee or permittee, who
35 violates this section regarding the purchase of or
36 attempt to purchase alcoholic liquor, wine, or beer
37 shall pay a ~~twenty-five~~ seventy-five dollar penalty."
38 ___. Page 1, lines 13 through 16, by striking the
39 words "or with the signed, written consent of the
40 parent or guardian specifying the date and place for
41 the consumption and displayed by the person upon
42 demand," and inserting the following: "~~or with the~~
43 ~~signed, written consent of the parent or guardian~~
44 ~~specifying the date and place for the consumption and~~
45 ~~displayed by the person upon demand,~~".
46 ___. Page 1, line 27, by striking the word
47 "fifty" and inserting the following: "~~fifty~~ one
48 hundred".
49 ___. Page 2, by inserting after line 2 the
50 following:

1 "Sec. ___. Section 123.49, subsection 1,
2 unnumbered paragraph 1, Code 1995, is amended to read
3 as follows:
4 A person shall not sell, ~~dispense,-or~~ give ~~to-an~~
5 ~~intoxicated-person,-or-one-simulating-intoxication~~, or
6 otherwise supply any alcoholic ~~liquor~~ beverage, wine,
7 or beer to any other person knowing or having
8 reasonable cause to believe the other person to be
9 intoxicated or simulating intoxication.
10 Sec. ___. Section 730.5, subsection 1, Code 1995,
11 is amended to read as follows:
12 1. As used in this section, unless the context
13 otherwise requires:
14 a. "~~drug~~ Drug test" means any blood, urine,
15 saliva, chemical, or skin tissue test conducted for
16 the purpose of detecting the presence of a chemical
17 substance in an individual.
18 b. "Employee" means employee as defined in section
19 85.61 and includes the employer, and any chief
20 executive officer, president, vice president,
21 supervisor, manager, and officer of the employer.
22 Sec. ___. Section 730.5, subsection 2, Code 1995,
23 is amended to read as follows:
24 2. Except as provided in subsection 7, an employer
25 shall not require or request employees or applicants
26 for employment to submit to a drug test as a condition
27 of employment, preemployment, promotion, or change in
28 status of employment. An employer shall not request,
29 require, or conduct random or blanket drug testing of
30 employees. However, this section does not apply to
31 preemployment drug tests authorized for peace officers
32 or correctional officers of the state, or to drug
33 tests required under federal statutes or under federal
34 regulations ~~adopted-as-of-July-1,-1990~~, or to drug
35 tests conducted pursuant to a nuclear regulatory
36 commission regulation, or to drug tests conducted to
37 determine if an employee is ineligible to receive
38 workers' compensation under section 85.16, subsection
39 2.
40 The exemption granted by this subsection relating
41 to drug testing pursuant to federal regulations
42 ~~adopted-as-of-July-1,-1990~~, is of no effect, as it
43 applies to a particular regulation, upon a finding by
44 a court of competent jurisdiction, including any
45 appeal of such finding, that the particular regulation
46 is unconstitutional or otherwise invalid. The
47 decision of a court invalidating any regulation
48 exempted by this section shall not be stayed pending
49 appeal.
50 Sec. ___. Section 730.5, subsection 3, paragraph

1 a, Code 1995, is amended to read as follows:
2 a. The employer has probable cause to believe that
3 an employee's faculties are impaired on the job. For
4 purposes of this paragraph, an employer has probable
5 cause to believe that an employee's faculties are
6 impaired on the job if the employer is investigating
7 an accident in the workplace and all of the following
8 conditions are met:
9 (1) The employer has reasonable grounds to believe
10 that the employee proposed to be tested either
11 directly caused or directly contributed to the
12 accident.
13 (2) The accident results in a personal injury
14 which requires medical treatment away from the
15 workplace or damage to property, including equipment,
16 in an amount reasonably estimated to exceed one
17 thousand dollars at the time of the accident.
18 (3) Prior to the accident, the employer has
19 provided the employee to be tested with written notice
20 of the employer's rules or policies regarding alcohol
21 and controlled substances and testing when a workplace
22 accident or injury occurs.
23 Sec. ___. Section 730.5, subsection 3, paragraph
24 c, Code 1995, is amended to read as follows:
25 c. The test sample withdrawn from the employee is
26 analyzed by a laboratory or testing facility that has
27 been approved under rules adopted by the department of
28 public health. The laboratory or testing facility
29 shall test for and report to the employer only the
30 presence of alcohol or illegal controlled substances
31 in any test sample. The report and information
32 provided the employer may be both qualitative and
33 quantitative but only concerning the presence of
34 alcohol or an illegal controlled substance in any test
35 sample. Upon request by an employee or applicant for
36 employment, the employer shall provide to the employee
37 or applicant the results of any drug test.
38 Sec. ___. Section 730.5, subsection 7, Code 1995,
39 is amended to read as follows:
40 7. ~~A drug test conducted as a part of a physical~~
41 ~~examination performed as a part of a preemployment~~
42 ~~physical or as a part of a regularly scheduled~~
43 ~~physical is only permissible~~ In addition to drug
44 testing permitted by subsection 3, drug testing of an
45 employee or applicant for employment shall also be
46 permitted under the following circumstances:
47 a. ~~For a preemployment physical, the~~ During a
48 preemployment application process. The employer shall
49 include notice that a drug test will be part of a
50 preemployment ~~physical~~ application process in any

1 notice or advertisement soliciting applicants for
2 employment or in the application for employment, and
3 an applicant for employment shall be personally
4 informed of the requirement for a drug test at the
5 first interview. However, in order to conduct a drug
6 test pursuant to this paragraph, the employer shall
7 provide that a preemployment application process which
8 includes a drug test shall be required in the same
9 manner for all job classifications of the employer in
10 which applicants for employment are sought.
11 b. ~~For a regularly scheduled physical, the~~ During
12 a regularly scheduled physical. The employer shall
13 give notice that a drug test will be part of the
14 physical at least thirty days prior to the date the
15 physical is scheduled. However, in order to conduct a
16 drug test pursuant to this paragraph, the employer
17 shall provide that a regularly scheduled physical
18 which includes a drug test shall be required in the
19 same manner for all classifications of employees of
20 the employer.
21 c. An employer may require an employee, as a
22 condition of employment to undergo drug testing, if
23 the employer has provided substance abuse evaluation,
24 and treatment, if recommended by the evaluation, which
25 have been paid for in whole or in part by the employer
26 or its insurance carrier. The employee may be
27 required to undergo drug testing without prior notice,
28 but in no case shall more than four tests be conducted
29 in the twenty-four-month period following the
30 employee's completion of substance abuse treatment if
31 the treatment was recommended by the evaluation. A
32 drug test shall not be required of an employee by an
33 employer during drug treatment of the employee, if
34 such testing would duplicate testing of the employee
35 conducted in the course of treatment and the employee
36 has waived confidentiality as to the employer of the
37 results of such testing. An employer shall not
38 require an employee to submit to drug testing under
39 this paragraph if more than twenty-four months have
40 elapsed since the employee successfully completed drug
41 treatment and the employee has not had a drug test
42 conducted indicating the presence of alcohol or an
43 illegal controlled substance during that twenty-four-
44 month period.
45 Drug testing conducted under this subsection shall
46 conform to the requirements of subsection 3,
47 paragraphs "c", "d", "e", and "f"; however, paragraph
48 "f" shall not apply to drug tests conducted as a part
49 of a preemployment ~~physical~~ application process.
50 Sec. ___. Section 730.5, subsection 11, Code 1995,

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Page 5

1 is amended by striking the subsection.
2 Sec. ___. Section 730.5, Code 1995, is amended by
3 adding the following new subsection:
4 NEW SUBSECTION. 12. An employer who conducts a
5 drug test pursuant to this section shall submit a
6 report annually to the labor division of the
7 department of employment services, documenting the
8 number of drug tests conducted, the results of the
9 tests conducted, and the direct costs associated with
10 the testing.""
11 2. Page 1, by striking lines 1 through 5.
12 3. By renumbering as necessary.

By MARY KRAMER

S-5884 FILED MAY 1, 1996
RULED OUT OF ORDER

(P. 1577)

SENATE AMENDMENT TO HOUSE AMENDMENT TO
SENATE FILE 2256

-6080

1 Amend the House amendment, S-5707, to Senate File
2 2256, as passed by the Senate, as follows:
3 1. By striking page 1, line 3, through page 2,
4 line 6, and inserting the following:
5 2. Page 1, by inserting before line 1 the
6 following:
7 "Section 1. Section 123.47, Code Supplement 1995,
8 is amended to read as follows:
9 123.47 PERSONS UNDER THE AGE OF EIGHTEEN --
10 PENALTY.
11 A person shall not sell, give, or otherwise supply
12 alcoholic liquor, wine, or beer to any person knowing
13 or having reasonable cause to believe that person to
14 be under the age of eighteen, and a person or persons
15 under the age of eighteen shall not purchase or
16 attempt to purchase, or individually or jointly have
17 alcoholic liquor, wine, or beer in their possession or
18 control; except in the case of liquor, wine, or beer
19 given or dispensed to a person under the age of
20 eighteen within a private home and with the knowledge,
21 presence, and consent of the parent or guardian, for
22 beverage or medicinal purposes or as administered to
23 the person by either a physician or dentist for
24 medicinal purposes and except to the extent that a
25 person under the age of eighteen may handle alcoholic
26 beverages, wine, and beer during the regular course of
27 the person's employment by a liquor control licensee,
28 or wine or beer permittee under this chapter. A
29 person, other than a licensee or permittee, who
30 violates this section regarding the purchase of or
31 attempt to purchase alcoholic liquor, wine, or beer
32 shall pay a ~~twenty-five~~ seventy-five dollar penalty."
33 3. Page 1, lines 13 through 16, by striking the
34 words "or with the signed, written consent of the
35 parent or guardian specifying the date and place for
36 the consumption and displayed by the person upon
37 demand," and inserting the following: "~~or with the~~
38 ~~signed, written consent of the parent or guardian~~
39 ~~specifying the date and place for the consumption and~~
40 ~~displayed by the person upon demand,~~".
41 4. Page 1, line 27, by striking the word "fifty"
42 and inserting the following: "~~fifty~~ one hundred".
43 5. Page 2, by inserting after line 2 the
44 following:
45 "Sec. ___. Section 123.49, subsection 1,
46 unnumbered paragraph 1, Code 1995, is amended to read
47 as follows:
48 A person shall not sell, ~~dispense, or~~ give ~~to an~~
49 ~~intoxicated person, or one simulating intoxication~~, or
50 otherwise supply any alcoholic ~~liquor~~ beverage, wine,

1 or beer to any other person knowing or having
2 reasonable cause to believe the other person to be
3 intoxicated or simulating intoxication.
4 Sec. ___. Section 730.5, subsection 1, Code 1995,
5 is amended to read as follows:
6 1. As used in this section, unless the context
7 otherwise requires:
8 a. "~~drug~~ Drug test" means any blood, urine,
9 saliva, chemical, or skin tissue test conducted for
10 the purpose of detecting the presence of a chemical
11 substance in an individual.
12 b. "Preemployment" means that period of time
13 between when a bona fide offer of employment is made
14 and when employment begins.
15 Sec. ___. Section 730.5, subsection 2, Code 1995,
16 is amended to read as follows:
17 2. Except as provided in subsection 7, an employer
18 shall not require or request employees or applicants
19 for employment to submit to a drug test as a condition
20 of employment, preemployment, promotion, or change in
21 status of employment. An employer shall not request,
22 require, or conduct random or blanket drug testing of
23 employees. However, this section does not apply to
24 preemployment drug tests authorized for peace officers
25 or correctional officers of the state, or to drug
26 tests required under federal statutes or under federal
27 regulations ~~adopted as of July 1, 1990~~, or to drug
28 tests conducted pursuant to a nuclear regulatory
29 commission regulation, or to drug tests conducted to
30 determine if an employee is ineligible to receive
31 workers' compensation under section 85.16, subsection
32 2.
33 The exemption granted by this subsection relating
34 to drug testing pursuant to federal regulations
35 ~~adopted as of July 1, 1990,~~ is of no effect, as it
36 applies to a particular regulation, upon a finding by
37 a court of competent jurisdiction, including any
38 appeal of such finding, that the particular regulation
39 is unconstitutional or otherwise invalid. The
40 decision of a court invalidating any regulation
41 exempted by this section shall not be stayed pending
42 appeal.
43 Sec. ___. Section 730.5, subsection 3, paragraph
44 a, Code 1995, is amended to read as follows:
45 a. The employer has probable cause to believe that
46 an employee's faculties are impaired on the job. For
47 purposes of this paragraph, an employer has probable
48 cause to believe that an employee's faculties are
49 impaired on the job if the employer is investigating
50 an accident in the workplace and all of the following

1 conditions are met:
2 (1) The employer has reasonable grounds to believe
3 that the employee proposed to be tested either
4 directly caused or directly contributed to the
5 accident.
6 (2) The employer has reasonable grounds to believe
7 that the employee's faculties were impaired and that
8 the impairment was likely a substantial factor in
9 causing the accident.
10 (3) The accident results in a personal injury
11 which requires medical treatment away from the
12 workplace or damage to property, including equipment,
13 in an amount reasonably estimated to exceed three
14 thousand dollars at the time of the accident.
15 (4) Prior to the accident, the employer has
16 provided the employee to be tested with written notice
17 of the employer's rules or policies regarding alcohol
18 and controlled substances and testing when a workplace
19 accident or injury occurs.
20 Sec. ___. Section 730.5, subsection 3, paragraph
21 c, Code 1995, is amended to read as follows:
22 c. The test sample withdrawn from the employee is
23 analyzed by a laboratory or testing facility that has
24 been approved under rules adopted by the department of
25 public health. The laboratory or testing facility
26 shall test for and report to the employer only the
27 presence of alcohol or illegal controlled substances
28 in any test sample. Upon request by an employee or
29 applicant for employment, the employer shall provide
30 to the employee or applicant the results of any drug
31 test. The rules adopted by the department of public
32 health shall provide for all of the following:
33 (1) The initial screening test may utilize
34 immunoassay, thin layer, high performance liquid or
35 gas chromatography, or an equivalent technology. If
36 the initial test utilizes immunoassay, the test kit
37 must meet the requirements of the United States food
38 and drug administration.
39 (2) Samples which have tested positive by initial
40 testing, with the exception of alcohol, shall be
41 confirmed by gas chromatography-mass spectrometry or
42 by a scientifically equivalent technique approved by
43 the department.
44 (3) All initial positive drug test results with
45 the exception of alcohol shall be confirmed by gas
46 chromatography-mass spectrometry or an equivalent test
47 approved by the department before being reported as
48 positive or negative.
49 (4) All initial positive test results for alcohol
50 shall be confirmed by gas chromatography, or a test

1 that is recognized by the department as an equivalent
2 test before being reported as positive or negative.
3 (5) Preliminary reports for drugs other than
4 alcohol shall not be issued in the absence of
5 confirmation by gas chromatography-mass spectrometry
6 or a scientifically equivalent test approved by the
7 department.
8 (6) Complete chain of custody procedures shall be
9 used for referred specimens. When sample volumes
10 permit, it is recommended that only an aliquot of the
11 original specimen be sent to a reference laboratory.
12 Sec. ___. Section 730.5, subsection 7, Code 1995,
13 is amended to read as follows:
14 7. ~~A drug test conducted as a part of a physical~~
15 ~~examination performed as a part of a preemployment~~
16 ~~physical or as a part of a regularly scheduled~~
17 ~~physical is only permissible~~ In addition to drug
18 testing permitted by subsection 3, drug testing of an
19 employee or applicant for employment shall also be
20 permitted under the following circumstances:
21 a. For a drug test during a preemployment
22 physical, the employer shall include notice that a
23 drug test will be part of a preemployment physical in
24 any notice or advertisement soliciting applicants for
25 employment or in the application for employment, and
26 an applicant for employment shall be personally
27 informed of the requirement for a drug test at the
28 first interview.
29 If the test sample withdrawn from the applicant is
30 analyzed by the state hygienic laboratory or a
31 laboratory certified by, and at the request of, the
32 state hygienic laboratory, the cost of the initial
33 test of the sample shall not be paid for by the
34 employer but shall be paid for by the state.
35 b. For a drug test during a regularly scheduled
36 physical, the employer shall give notice that a drug
37 test will be part of the physical at least thirty days
38 prior to the date the physical is scheduled.
39 c. For a preemployment drug test not conducted as
40 part of a preemployment physical, the employer shall
41 provide that any sample taken for analysis be taken
42 under the direct supervision of a person licensed
43 under chapter 148, 148C, 150A, or 152, and that the
44 sample shall be analyzed by the state hygienic
45 laboratory or a laboratory certified by, and at the
46 request of, the state hygienic laboratory.
47 d. An employer may require an employee, as a
48 condition of employment, to undergo testing for
49 illegal use of drugs if that employee has been
50 referred by the employer for substance abuse

1 evaluation pursuant to subsection 3, paragraph "f",
2 and treatment, if recommended by the evaluation. The
3 employee may be required to undergo testing for
4 illegal use of drugs without prior notice, but in no
5 case shall more than three tests be conducted in the
6 eighteen-month period following the employee's
7 completion of substance abuse treatment if the
8 treatment was recommended by the evaluation. A drug
9 test shall not be required of an employee by an
10 employer during drug treatment of the employee, if
11 such testing would duplicate testing of the employee
12 conducted in the course of treatment and the employee
13 has waived confidentiality as to the employer of the
14 results of such testing. An employer shall not
15 require an employee to submit to testing for illegal
16 use of drugs under this paragraph if more than
17 eighteen months have elapsed since the employee
18 successfully completed drug treatment and the employee
19 has not had a drug test conducted indicating the
20 presence of alcohol or an illegal controlled substance
21 during that eighteen-month period.
22 e. If a preemployment drug test is conducted on an
23 applicant who does not reside in this state, the
24 sample taken for analysis shall be maintained under
25 the supervision of a comparable licensed person in the
26 state in which the test is conducted and the drug test
27 shall be performed by a laboratory certified by United
28 States department of health and human services.
29 Drug testing conducted under this subsection shall
30 conform to the requirements of subsection 3,
31 paragraphs "c", "d", "e", and "f"; however, paragraph
32 "f" shall not apply to preemployment drug tests
33 ~~conducted as a part of a preemployment physical~~.
34 Sec. ___. Section 730.5, subsection 9, paragraph
35 a, Code 1995, is amended to read as follows:
36 a. A person who violates this section or who aids
37 in the violation of this section is liable to an
38 aggrieved employee or applicant for employment for
39 affirmative relief including reinstatement or hiring,
40 with or without back pay, liquidated damages in the
41 amount of one hundred dollars for each violation, or
42 any other equitable relief as the court deems
43 appropriate including attorney fees and court costs.
44 Sec. ___. Section 730.5, subsection 11, Code 1995,
45 is amended by striking the subsection.
46 Sec. ___. Section 730.5, Code 1995, is amended by
47 adding the following new subsections:
48 NEW SUBSECTION. 12. An employer who conducts a
49 drug test pursuant to this section shall, for each
50 fiscal year beginning on or after July 1, 1996, file

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Page 6

1 an annual report with the division of labor services
2 of the department of employment services, on forms
3 provided by the division, documenting separately the
4 following information for all preemployment drug
5 tests, regularly scheduled drug tests, and drug tests
6 conducted pursuant to a finding of probable cause:
7 a. The number of drug tests conducted in each
8 category.
9 b. The results of drug tests conducted in each
10 category.
11 c. The number of personal injuries, and the dollar
12 loss for property damage, arising out of the use of
13 alcohol and illegal controlled substances by
14 employees.
15 d. The cumulative direct costs of drug tests in
16 each category.
17 e. The cost of substance abuse evaluation and
18 treatment for employees in each category.
19 NEW SUBSECTION. 13. Any court ordered drug test
20 shall not in any manner affect the rights of an
21 employer to conduct a drug test under this section."
22 6. Title page, lines 1 and 2, by striking the
23 words "by persons aged eighteen, nineteen, and
24 twenty," and inserting the following: "or drugs,".
25 7. By renumbering, relettering, or redesignating
26 and correcting internal references as necessary."

RECEIVED FROM THE SENATE

H-6080 FILED MAY 1, 1996

SENATE FILE 2256

H-5911

1 Amend Senate File 2256, as passed by the Senate, as
2 follows:
3 1. Page 1, by inserting before line 1 the
4 following:
5 "Section 1. Section 123.28, unnumbered paragraph
6 2, Code 1995, is amended by striking the unnumbered
7 paragraph."
8 2. Page 2, by inserting after line 2 the
9 following:
10 "Sec. ___. NEW SECTION. 321.281 OPEN CONTAINER
11 OR RECEPTACLE IN MOTOR VEHICLE -- ALCOHOLIC BEVERAGE.
12 A person driving a motor vehicle shall not
13 knowingly possess in a motor vehicle upon a public
14 street or highway an open or unsealed bottle, can,
15 jar, or other receptacle containing an alcoholic
16 beverage with the intent to consume the alcoholic
17 beverage while the motor vehicle is upon a public
18 street or highway. Evidence that an open or unsealed
19 receptacle containing an alcoholic beverage was found
20 during an authorized search in the glove compartment,
21 utility compartment, console, front passenger seat, or
22 any unlocked portable device and within the immediate
23 reach of the driver while the motor vehicle is upon a
24 public street or highway is evidence from which the
25 court or jury may infer that the driver intended to
26 consume the alcoholic beverage while upon the public
27 street or highway if the inference is supported by
28 corroborative evidence. However, an open or unsealed
29 receptacle containing an alcoholic beverage may be
30 transported at any time in the trunk of the motor
31 vehicle or in some other area of the interior of the
32 motor vehicle not designed or intended to be occupied
33 by the driver and not readily accessible to the driver
34 while the motor vehicle is in motion. A person
35 convicted of a violation of this paragraph is guilty
36 of a misdemeanor and subject only to the imposition of
37 a scheduled fine under section 805.8, subsection 2,
38 paragraph "z". An abstract of the conviction shall be
39 forwarded to the department for inclusion on the
40 person's driving record. A conviction under this
41 section shall be counted as a moving violation on the
42 person's driving record.
43 Sec. ___. Section 805.8, subsection 2, Code
44 Supplement 1995, is amended by adding the following
45 new paragraph:
46 NEW PARAGRAPH. z. For violation of open container
47 provisions under section 321.281, the scheduled fine
48 is twenty dollars."
49 3. Title page, lines 1 and 2, by striking the
50 words "by persons aged eighteen, nineteen, and

1 twenty".
2 4. By renumbering as necessary.

By DISNEY of Polk

H-5911 FILED APRIL 10, 1996

Not Germane 4-10-96

(p. 1521)

SENATE FILE 2256

S-5780

1 Amend the House amendment, S-5707, to Senate File
2 2256, as passed by the Senate, as follows:
3 1. By striking page 1, line 41, through page 2,
4 line 1.
5 2. By renumbering as necessary.

By O. GENE MADDOX
ANDY McKEAN
NANCY BOETTGER
JOANN DOUGLAS

S-5780 FILED APRIL 15, 1996

adopted 5/1/96 (P. 1577)

SENATE FILE 2256

H-5889

1 Amend Senate File 2256, as passed by the Senate, as
2 follows:
3 1. Page 1, by inserting before line 1 the
4 following:
5 "Section 1. Section 123.47, Code Supplement 1995,
6 is amended to read as follows:
7 123.47 PERSONS UNDER THE AGE OF EIGHTEEN --
8 PENALTY.
9 A person shall not sell, give, or otherwise supply
10 alcoholic liquor, wine, or beer to any person knowing
11 or having reasonable cause to believe that person to
12 be under the age of eighteen, and a person or persons
13 under the age of eighteen shall not purchase or
14 attempt to purchase, or individually or jointly have
15 alcoholic liquor, wine, or beer in their possession or
16 control; except in the case of liquor, wine, or beer
17 given or dispensed to a person under the age of
18 eighteen within a private home and with the knowledge,
19 presence, and consent of the parent or guardian, for
20 beverage or medicinal purposes or as administered to
21 the person by either a physician or dentist for
22 medicinal purposes and except to the extent that a
23 person under the age of eighteen may handle alcoholic
24 beverages, wine, and beer during the regular course of
25 the person's employment by a liquor control licensee,
26 or wine or beer permittee under this chapter. A
27 person, other than a licensee or permittee, who
28 violates this section regarding the purchase of or
29 attempt to purchase alcoholic liquor, wine, or beer
30 shall pay a ~~twenty-five~~ seventy-five dollar penalty."
31 2. Page 1, lines 13 through 16, by striking the
32 words "or with the signed, written consent of the
33 parent or guardian specifying the date and place for
34 the consumption and displayed by the person upon
35 demand," and inserting the following: "~~or with the~~
36 ~~signed, written consent of the parent or guardian~~
37 ~~specifying the date and place for the consumption and~~
38 ~~displayed by the person upon demand,~~".
39 3. Page 1, line 27, by striking the word "fifty"
40 and inserting the following: "~~fifty~~ one hundred".
41 4. By renumbering as necessary.

By MARTIN of Scott
LAMBERTI of Polk

H-5889 FILED APRIL 9, 1996

adopted 4-10-96

(p. 1518)

SENATE FILE 2256

H-5902

1 Amend Senate File 2256, as passed by the Senate, as
2 follows:
3 1. Page 2, by inserting after line 2 the
4 following:
5 "Sec. ___. Section 123.49, subsection 1,
6 unnumbered paragraph 1, Code 1995, is amended to read
7 as follows:
8 A person shall not sell, ~~dispense, or~~ give ~~to an~~
9 ~~intoxicated person, or one simulating intoxication~~, or
10 otherwise supply any alcoholic ~~liquor~~ beverage, wine,
11 or beer to any other person knowing or having
12 reasonable cause to believe the other person to be
13 intoxicated or simulating intoxication."
14 2. Title page, lines 1 and 2, by striking the
15 words "by persons aged eighteen, nineteen, and
16 twenty,".
17 3. By renumbering as necessary.

By LAMBERTI of Polk
HEATON of Henry
COHOON of Des Moines

H-5902 FILED APRIL 9, 1996

Adopted 4-10-96
(p. 1519)

HOUSE AMENDMENT TO
SENATE FILE 2256

S-5707

1 Amend Senate File 2256, as passed by the Senate, as
2 follows:
3 1. Page 1, by inserting before line 1 the
4 following:
5 "Section 1. Section 123.47, Code Supplement 1995,
6 is amended to read as follows:
7 123.47 PERSONS UNDER THE AGE OF EIGHTEEN --
8 PENALTY.
9 A person shall not sell, give, or otherwise supply
10 alcoholic liquor, wine, or beer to any person knowing
11 or having reasonable cause to believe that person to
12 be under the age of eighteen, and a person or persons
13 under the age of eighteen shall not purchase or
14 attempt to purchase, or individually or jointly have
15 alcoholic liquor, wine, or beer in their possession or
16 control; except in the case of liquor, wine, or beer
17 given or dispensed to a person under the age of
18 eighteen within a private home and with the knowledge,
19 presence, and consent of the parent or guardian, for
20 beverage or medicinal purposes or as administered to
21 the person by either a physician or dentist for
22 medicinal purposes and except to the extent that a
23 person under the age of eighteen may handle alcoholic
24 beverages, wine, and beer during the regular course of
25 the person's employment by a liquor control licensee,
26 or wine or beer permittee under this chapter. A
27 person, other than a licensee or permittee, who
28 violates this section regarding the purchase of or
29 attempt to purchase alcoholic liquor, wine, or beer
30 shall pay a ~~twenty-five~~ seventy-five dollar penalty."
31 2. Page 1, lines 13 through 16, by striking the
32 words "or with the signed, written consent of the
33 parent or guardian specifying the date and place for
34 the consumption and displayed by the person upon
35 demand," and inserting the following: "~~or with the~~
36 ~~signed, written consent of the parent or guardian~~
37 ~~specifying the date and place for the consumption and~~
38 ~~displayed by the person upon demand,~~".
39 3. Page 1, line 27, by striking the word "fifty"
40 and inserting the following: "~~fifty~~ one hundred".
41 4. Page 2, by inserting after line 2 the
42 following:
43 "Sec. ___. Section 123.49, subsection 1,
44 unnumbered paragraph 1, Code 1995, is amended to read
45 as follows:
46 A person shall not sell, ~~dispense, or~~ give ~~to an~~
47 ~~intoxicated person, or one simulating intoxication~~, or
48 otherwise supply any alcoholic ~~liquor~~ beverage, wine,
49 or beer to any other person knowing or having
50 reasonable cause to believe the other person to be

1 intoxicated or simulating intoxication."
2 5. Title page, lines 1 and 2, by striking the
3 words "by persons aged eighteen, nineteen, and
4 twenty,".
5 6. By renumbering, relettering, or redesignating
6 and correcting internal references as necessary.

RECEIVED FROM THE HOUSE

S-5707 FILED APRIL 10, 1996

Senate Concurred 5/1/96 (P. 1578)