

REPRINTED

FILED MAR 2 1998

SENATE FILE 2369
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 2184)

Passed Senate, ^(p.701) Date 3-12-98 Passed House, Date _____
Vote: Ayes 42 Nays 0 Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act adding an offense for operating while intoxicated for
2 persons driving a motor vehicle after taking certain
3 controlled substances, making penalties applicable, and making
4 related changes.

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

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S.F. 2369

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

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

7 Sec. 2. Section 321J.2, subsection 1, Code Supplement
8 1997, is amended to read as follows:

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

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

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

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

18 Sec. 3. Section 321J.2, subsections 7 and 8, Code
19 Supplement 1997, are amended to read as follows:

20 7. a. This section does not apply to a person operating a
21 motor vehicle while under the influence of a drug if the
22 substance was prescribed for the person and was taken under
23 the prescription and in accordance with the directions of a
24 medical practitioner as defined in chapter 155A, if there is
25 no evidence of the consumption of alcohol and the medical
26 practitioner had not directed the person to refrain from
27 operating a motor vehicle.

28 b. When charged with a violation of subsection 1,
29 paragraph "c", a person may assert, as an affirmative defense,
30 that the controlled substance present in the person's blood or
31 urine was prescribed for the person and was taken in
32 accordance with the directions of a practitioner as defined in
33 section 155A.3.

34 8. In any prosecution under this section, evidence of the
35 results of analysis of a specimen of the defendant's blood,

1 breath, or urine is admissible upon proof of a proper
2 foundation.

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

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

16 Sec. 4. Section 321J.2, subsection 10, Code Supplement
17 1997, is amended to read as follows:

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

26 Sec. 5. Section 321J.5, subsection 2, Code 1997, is
27 amended to read as follows:

28 2. In any motor vehicle collision, the peace officer shall
29 assess the operator of each vehicle, and in conjunction with
30 the preliminary screening test administered pursuant to
31 subsection 1, determine whether each operator may have been
32 under the influence of a controlled substance, a drug other
33 than alcohol, or a combination of alcohol and other drug. If
34 the peace officer determines that there are reasonable grounds
35 to believe that an operator may have been under the influence

1 of a controlled substance, a drug other than alcohol, or a
2 combination of alcohol and another drug, the peace officer
3 shall request that the operator submit to a blood or urine
4 test pursuant to section 321J.6.

5 3. The peace officer shall use best efforts to obtain a
6 test required under subsection 2 as soon as practicable.

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

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

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

29 Sec. 7. Section 321J.6, subsection 1, paragraphs d and f,
30 Code 1997, are amended to read as follows:

31 d. The preliminary breath screening test was administered
32 and it indicated an alcohol concentration ~~as defined in equal~~
33 to or in excess of the level prohibited by section 321J.1 of
34 ~~18 or more~~ 321J.2.

35 e. The preliminary breath screening test was administered

1 and it indicated an alcohol concentration of less than 0.10
2 the level prohibited by section 321J.2, and the peace officer
3 has reasonable grounds to believe that the person was under
4 the influence of a controlled substance, a drug other than
5 alcohol, or a combination of alcohol and another drug.

6 Sec. 8. Section 321J.6, subsection 3, Code 1997, is
7 amended to read as follows:

8 3. Notwithstanding subsection 2, if the peace officer has
9 reasonable grounds to believe that the person was under the
10 influence of a controlled substance, a drug other than
11 alcohol, or a combination of alcohol and another drug, a blood
12 or urine test may shall be required even after ~~a blood or~~
13 ~~breath~~ another type of test has been administered. Section
14 321J.9 applies to a refusal to submit to a chemical test of
15 urine requested under this subsection. If a urine test has
16 already been administered, but the person refuses to consent
17 to a blood test, the peace officer shall obtain a warrant for
18 a blood test pursuant to section 321J.10.

19 Sec. 9. Section 321J.8, subsection 2, Code 1997, is
20 amended to read as follows:

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

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

33 4. a. Search warrants issued under this section shall
34 authorize and direct peace officers to secure the withdrawal
35 of blood specimens by medical personnel under section 321J.11.

1 Reasonable care shall be exercised to ensure the health and
2 safety of the persons from whom specimens are withdrawn in
3 execution of the warrants.

4 b. If a person from whom a specimen is to be withdrawn
5 objects to the withdrawal of blood, and the warrant may be
6 executed according to the following:

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

14 (2) If the testimony in support of the warrant sets forth
15 facts and information that the peace officer has reasonable
16 grounds to believe that the person was under the influence of
17 a controlled substance, a drug other than alcohol, or a
18 combination of alcohol and another drug, a urine test may be
19 executed, if the person is capable of giving a urine sample
20 and materials for testing the urine sample are readily
21 available. If the peace officer has previously requested a
22 urine sample, but has sought the warrant to compel a blood
23 sample, a blood test may be taken in accordance with this
24 chapter.

25 Sec. 11. Section 321J.11, unnumbered paragraph 1, Code
26 1997, is amended to read as follows:

27 Only a licensed physician, licensed physician assistant as
28 defined in section 148C.1, medical technologist, or registered
29 nurse, acting at the request of a peace officer, may withdraw
30 a specimen of blood for the purpose of determining the alcohol
31 concentration or the presence of a controlled substance or
32 other drugs. However, any peace officer, using devices and
33 methods approved by the commissioner of public safety, may
34 take a specimen of a person's breath or urine for the purpose
35 of determining the alcohol concentration or the presence of a

1 controlled substance or other drugs. Only new equipment kept
2 under strictly sanitary and sterile conditions shall be used
3 for drawing blood.

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

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

20 a. One hundred eighty days if the person has had no
21 revocation under this chapter.

22 b. One year if the person has had a previous revocation
23 under this chapter.

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

35 4. If the peace officer serves that immediate notice, the

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

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

18 Sec. 13. Section 321J.13, subsection 2, Code Supplement
19 1997, is amended to read as follows:

20 2. The department shall grant the person an opportunity to
21 be heard within forty-five days of receipt of a request for a
22 hearing if the request is made not later than ten days after
23 receipt of notice of revocation served pursuant to section
24 321J.9 or 321J.12. The hearing shall be before the department
25 in the county where the alleged events occurred, unless the
26 director and the person agree that the hearing may be held in
27 some other county, or the hearing may be held by telephone
28 conference at the discretion of the agency conducting the
29 hearing. The hearing may be recorded and its scope shall be
30 limited to the issues of whether a peace officer had
31 reasonable grounds to believe that the person was operating a
32 motor vehicle in violation of section 321J.2 or section
33 321J.2A and either one or more of the following:

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

1 b. Whether a test was administered and the test results
2 indicated an alcohol concentration as defined in equal to or
3 in excess of the level prohibited under section 321J.1 of 10
4 or more or whether a test was administered and the test
5 results indicated an alcohol concentration as defined in
6 section 321J.1 of 02 or more pursuant to section 321J.2 or
7 321J.2A.

8 c. Whether a test was administered and the test results
9 indicated the presence of alcohol, a controlled substance or
10 other drug, or a combination of alcohol and another drug, in
11 violation of section 321J.2.

12 Sec. 14. Section 321J.15, Code 1997, is amended to read as
13 follows:

14 321J.15 EVIDENCE IN ANY ACTION.

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

27 Sec. 15. Section 321J.18, Code 1997, is amended to read as
28 follows:

29 321J.18 OTHER EVIDENCE.

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

1 motor vehicle.

2 Sec. 16. IMPLEMENTATION OF ACT. Section 25B.2, subsection
3 3, shall not apply to this Act.

4 EXPLANATION

5 This bill amends Code section 321J.1 by adding a definition
6 for "controlled substance", as used in chapter 321J, to refer
7 to drugs listed under schedule I or II of Code chapter 124.

8 This bill amends Code section 321J.2 by adding an OWI
9 offense for a person who operates a motor vehicle after taking
10 any amount of controlled substance listed in schedule I or II.
11 Conforming amendments reflecting this change are made
12 throughout Code chapter 321J.

13 This bill further amends Code section 321J.2 by adding an
14 affirmative defense to OWI charges for prescribed medication
15 when a controlled substance violation is charged. The bill
16 also adds a legal presumption regarding blood or urine
17 specimens for controlled substance violations.

18 The bill also requires that a peace officer assess each
19 operator to determine whether one or more of the operators
20 involved in the collision may have been under the influence of
21 a drug other than alcohol, or a combination of alcohol and
22 another drug. If the peace officer determines this to be the
23 case, a blood or urine test shall be requested pursuant to
24 Code section 321J.6.

25 Code section 321J.6 is amended to require a peace officer
26 to administer a blood or urine test to a person the peace
27 officer reasonably believes may be under the influence of a
28 controlled substance, a drug other than alcohol, or a
29 combination of alcohol and another controlled substance or a
30 drug. If a urine test has already been administered, but the
31 person refuses to consent to a blood test, the peace officer
32 is required to request a warrant pursuant to Code section
33 321J.10 to obtain the blood sample.

34 Other technical changes are made throughout Code chapter
35 321J.

1 This bill may include a state mandate as defined in Code
2 chapter 25B. This bill makes inapplicable Code section 25B.2,
3 which would relieve a political subdivision from complying
4 with a state mandate if funding for the cost of the state
5 mandate is not provided or specified. Therefore, political
6 subdivisions are required to comply with any state mandate
7 included in this bill.

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SENATE FILE 2369
FISCAL NOTE

A fiscal note for Senate File 2369 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 2369 adds a definition for controlled substances and an OWI offense for persons operating a motor vehicle after taking any amount of a controlled substance listed in Schedule I or II. The Bill provides procedures for assessing a potential violation of the OWI law, and for the collection of urine or blood samples from the person.

ASSUMPTIONS

1. Current law provides for arrest of individuals under the influence of drugs.
2. There would be no increase in the number of OWI arrests. If the preliminary screening test provisions provide increased convictions, the correctional system could be impacted, although this cannot be determined with current data.
3. The Department of Public Safety would train and certify 14 troopers as Drug Recognition Examiners at a cost of \$2,000 per trooper.

CORRECTIONAL IMPACT

Senate File 2369 is not expected to have a significant correctional impact.

FISCAL IMPACT

Senate File 2369 would increase FY 1999 costs to the Department of Public Safety by \$28,000.

SOURCES

Criminal and Juvenile Justice Planning Division,
Department of Human Rights
Judicial Department
Department of Public Safety
Department of Transportation
Iowa Law Enforcement Academy

(LSB 3995SV, DDK)

FILED MARCH 11, 1998

BY DENNIS PROUTY, FISCAL DIRECTOR

SENATE FILE 2369

-5176

1 Amend Senate File 2369 as follows:

2 1. Page 1, line 32, by inserting after the word
3 "practitioner" the following: "and the labeling
4 directions of the pharmacy,".5 2. Page 1, line 32, by inserting after the word
6 "as" the following: "that person and place of
7 business are".8 3. By striking page 2, line 26, through page 3,
9 line 12.10 4. Page 4, by striking lines 15 through 18, and
11 inserting the following: "urine or blood requested
12 under this subsection".13 5. Page 5, line 6, by striking the words
14 "according to the following" and inserting the
15 following: "as follows".16 6. Page 5, by striking lines 18 through 24, and
17 inserting the following: "combination of alcohol and
18 another drug, a urine sample shall be collected in
19 lieu of a blood sample, if the person is capable of
20 giving a urine sample and the sample can be collected
21 without the need to physically compel the execution of
22 the warrant."

23 7. By renumbering or relettering as necessary.

By LARRY MCKIBBEN

Adopted 3/12/98 (p. 900)

S-5176 FILED MARCH 10, 1998

SENATE FILE 2369

S-5235

1 Amend Senate File 2369 as follows:

2 1. Page 9, by striking lines 2 and 3.

3 2. By renumbering as necessary.

By TOM VILSACK

S-5235 FILED MARCH 12, 1998

LOST

(p. 901)

SENATE FILE **2369**
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 2184)
(AS AMENDED AND PASSED BY THE SENATE MARCH 12, 1998)
~~_____~~ - New Language by the Senate
* - Language Stricken by the Senate

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

A BILL FOR

1 An Act adding an offense for operating while intoxicated for
2 persons driving a motor vehicle after taking certain
3 controlled substances, making penalties applicable, and making
4 related changes.

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

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S.F. 2369

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

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

7 Sec. 2. Section 321J.2, subsection 1, Code Supplement
8 1997, is amended to read as follows:

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

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

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

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

18 Sec. 3. Section 321J.2, subsections 7 and 8, Code
19 Supplement 1997, are amended to read as follows:

20 7. a. This section does not apply to a person operating a
21 motor vehicle while under the influence of a drug if the
22 substance was prescribed for the person and was taken under
23 the prescription and in accordance with the directions of a
24 medical practitioner as defined in chapter 155A, if there is
25 no evidence of the consumption of alcohol and the medical
26 practitioner had not directed the person to refrain from
27 operating a motor vehicle.

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

35 8. In any prosecution under this section, evidence of the

1 results of analysis of a specimen of the defendant's blood,
2 breath, or urine is admissible upon proof of a proper
3 foundation.

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

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

17 Sec. 4. Section 321J.2, subsection 10, Code Supplement
18 1997, is amended to read as follows:

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

*27 Sec. 6. Section 321J.6, subsection 1, unnumbered paragraph
28 1, Code 1997, is amended to read as follows:

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

1 of a controlled substance or other drugs, subject to this
2 section. The withdrawal of the body substances and the test
3 or tests shall be administered at the written request of a
4 peace officer having reasonable grounds to believe that the
5 person was operating a motor vehicle in violation of section
6 321J.2 or 321J.2A, and if any of the following conditions
7 exist:

8 Sec. 7. Section 321J.6, subsection 1, paragraphs d and f,
9 Code 1997, are amended to read as follows:

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

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

20 Sec. 8. Section 321J.6, subsection 3, Code 1997, is
21 amended to read as follows:

22 3. Notwithstanding subsection 2, if the peace officer has
23 reasonable grounds to believe that the person was under the
24 influence of a controlled substance, a drug other than
25 alcohol, or a combination of alcohol and another drug, a blood
26 or urine test may shall be required even after ~~a blood or~~
27 breath another type of test has been administered. Section
28 321J.9 applies to a refusal to submit to a chemical test of
29 urine or blood requested under this subsection.

30 Sec. 9. Section 321J.8, subsection 2, Code 1997, is
31 amended to read as follows:

32 2. If the person submits to the test and the results
33 indicate the presence of a controlled substance or other drug,
34 or an alcohol concentration as defined in equal to or in
35 excess of the level prohibited by section 321J.2 or 321J.2A

1 more, or the person is under the age of twenty-one and the
2 results indicate an alcohol concentration of .02 or more, but
3 less than .10 321J.2 or 321J.2A, the person's motor vehicle
4 license or nonresident operating privilege will be revoked by
5 the department as required by and for the applicable period
6 specified under section 321J.12.

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

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

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

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

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

34 Sec. 11. Section 321J.11, unnumbered paragraph 1, Code
35 1997, is amended to read as follows:

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

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

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

29 a. One hundred eighty days if the person has had no
30 revocation under this chapter.

31 b. One year if the person has had a previous revocation
32 under this chapter.

33 3. The effective date of the revocation shall be ten days
34 after the department has mailed notice of revocation to the
35 person by certified mail. The peace officer who requested or

1 directed the administration of the chemical test may, on
2 behalf of the department, serve immediate notice of revocation
3 on a person whose test results indicated the presence of a
4 controlled substance or other drug, or an alcohol
5 concentration of--10-or-more equal to or in excess of the
6 level prohibited by section 321J.2, or a combination of
7 alcohol and another controlled substance or drug in violation
8 of section 321J.2.

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 ten days.
12 The peace officer shall immediately send the person's driver's
13 license to the department along with the officer's certificate
14 indicating that the test results indicated the presence of a
15 controlled substance or other drug, or an alcohol
16 concentration of--10-or-more equal to or in excess of the
17 level prohibited by section 321J.2.

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

27 Sec. 13. Section 321J.13, subsection 2, Code Supplement
28 1997, is amended to read as follows:

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 ten days after
32 receipt of notice of revocation served pursuant to section
33 321J.9 or 321J.12. The hearing shall be before the department
34 in the county where the alleged events occurred, unless the
35 director and the person agree that the hearing may be held in

1 some other county, or the hearing may be held by telephone
2 conference at the discretion of the agency conducting the
3 hearing. The hearing may be recorded and its scope shall be
4 limited to the issues of whether a peace officer had
5 reasonable grounds to believe that the person was operating a
6 motor vehicle in violation of section 321J.2 or section
7 321J.2A and either one or more 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 equal to or
12 in excess of the level prohibited under section 321J.1-of-10
13 or more or whether a test was administered and the test
14 results indicated an alcohol concentration as defined in
15 section 321J.1-of-02 or more pursuant to section 321J.2 or
16 321J.2A.

17 c. Whether a test was administered and the test results
18 indicated the presence of alcohol, a controlled substance or
19 other drug, or a combination of alcohol and another drug, in
20 violation of section 321J.2.

21 Sec. 14. Section 321J.15, Code 1997, is amended to read as
22 follows:

23 321J.15 EVIDENCE IN ANY ACTION.

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

1 Sec. 15. Section 321J.18, Code 1997, is amended to read as
2 follows:

3 321J.18 OTHER EVIDENCE.

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

11 Sec. 16. IMPLEMENTATION OF ACT. Section 25B.2, subsection
12 3, shall not apply to this Act.

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SSB-2184

Judiciary

Succeeded By

(SF) HF 2369

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON MCKEAN)

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

A BILL FOR

1 An Act adding an offense for operating while intoxicated for
2 persons driving a motor vehicle after taking certain
3 controlled substances, making penalties applicable, and making
4 related changes.

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

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

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

7 Sec. 2. Section 321J.2, subsection 1, Code Supplement
8 1997, is amended to read as follows:

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

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

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

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

18 Sec. 3. Section 321J.2, subsections 7 and 8, Code
19 Supplement 1997, are amended to read as follows:

20 7. a. This section does not apply to a person operating a
21 motor vehicle while under the influence of a drug if the
22 substance was prescribed for the person and was taken under
23 the prescription and in accordance with the directions of a
24 medical practitioner as defined in chapter 155A, if there is
25 no evidence of the consumption of alcohol and the medical
26 practitioner had not directed the person to refrain from
27 operating a motor vehicle.

28 b. When charged with a violation of subsection 1,
29 paragraph "c", a person may assert, as an affirmative defense,
30 that the controlled substance present in the person's blood or
31 urine was prescribed for the person and was taken in
32 accordance with the directions of a practitioner as defined in
33 section 155A.3.

34 8. In any prosecution under this section, evidence of the
35 results of analysis of a specimen of the defendant's blood,

1 breath, or urine is admissible upon proof of a proper
2 foundation.

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

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

16 Sec. 4. Section 321J.2, subsection 10, Code Supplement
17 1997, is amended to read as follows:

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

26 Sec. 5. Section 321J.5, subsection 2, Code 1997, is
27 amended to read as follows:

28 2. In any motor vehicle collision, the peace officer shall
29 assess the operator of each vehicle, and in conjunction with
30 the preliminary screening test administered pursuant to
31 subsection 1, determine whether each operator may have been
32 under the influence of a controlled substance, a drug other
33 than alcohol, or a combination of alcohol and other drug. If
34 the peace officer determines that there are reasonable grounds
35 to believe that an operator may have been under the influence

1 of a controlled substance, a drug other than alcohol, or a
2 combination of alcohol and another drug, the peace officer
3 shall request that the operator submit to a blood or urine
4 test pursuant to section 321J.6.

5 3. The peace officer shall use best efforts to obtain a
6 test required under subsection 2 as soon as practicable.

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

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

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

29 Sec. 7. Section 321J.6, subsection 1, paragraphs d and f,
30 Code 1997, are amended to read as follows:

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

35 f. The preliminary breath screening test was administered

1 and it indicated an alcohol concentration of less than 0.10
2 the level prohibited by section 321J.2, and the peace officer
3 has reasonable grounds to believe that the person was under
4 the influence of a controlled substance, a drug other than
5 alcohol, or a combination of alcohol and another drug.

6 Sec. 8. Section 321J.6, subsection 3, Code 1997, is
7 amended to read as follows:

8 3. Notwithstanding subsection 2, if the peace officer has
9 reasonable grounds to believe that the person was under the
10 influence of a controlled substance, a drug other than
11 alcohol, or a combination of alcohol and another drug, a blood
12 or urine test may shall be required even after a-blood-or
13 breath another type of test has been administered. Section
14 321J.9 applies to a refusal to submit to a chemical test of
15 urine requested under this subsection. If a urine test has
16 already been administered, but the person refuses to consent
17 to a blood test, the peace officer shall obtain a warrant for
18 a blood test pursuant to section 321J.10.

19 Sec. 9. Section 321J.8, subsection 2, Code 1997, is
20 amended to read as follows:

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

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

33 4. a. Search warrants issued under this section shall
34 authorize and direct peace officers to secure the withdrawal
35 of blood specimens by medical personnel under section 321J.11.

1 Reasonable care shall be exercised to ensure the health and
2 safety of the persons from whom specimens are withdrawn in
3 execution of the warrants.

4 b. If a person from whom a specimen is to be withdrawn
5 objects to the withdrawal of blood, and the warrant may be
6 executed according to the following:

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

14 (2) If the testimony in support of the warrant sets forth
15 facts and information that the peace officer has reasonable
16 grounds to believe that the person was under the influence of
17 a controlled substance, a drug other than alcohol, or a
18 combination of alcohol and another drug, a urine test may be
19 executed, if the person is capable of giving a urine sample
20 and materials for testing the urine sample are readily
21 available. If the peace officer has previously requested a
22 urine sample, but has sought the warrant to compel a blood
23 sample, a blood test may be taken in accordance with this
24 chapter.

25 Sec. 11. Section 321J.11, unnumbered paragraph 1, Code
26 1997, is amended to read as follows:

27 Only a licensed physician, licensed physician assistant as
28 defined in section 148C.1, medical technologist, or registered
29 nurse, acting at the request of a peace officer, may withdraw
30 a specimen of blood for the purpose of determining the alcohol
31 concentration or the presence of a controlled substance or
32 other drugs. However, any peace officer, using devices and
33 methods approved by the commissioner of public safety, may
34 take a specimen of a person's breath or urine for the purpose
35 of determining the alcohol concentration or the presence of a

1 controlled substance or other drugs. Only new equipment kept
2 under strictly sanitary and sterile conditions shall be used
3 for drawing blood.

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

6 1. Upon certification, subject to penalty for perjury, by
7 the peace officer that there existed reasonable grounds to
8 believe that the person had been operating a motor vehicle in
9 violation of section 321J.2, that there existed one or more of
10 the necessary conditions for chemical testing described in
11 section 321J.6, subsection 1, and that the person submitted to
12 chemical testing and the test results indicated the presence
13 of a controlled substance or other drug, or an alcohol
14 concentration as-defined-in equal to or in excess of the level
15 prohibited by section ~~321J.1~~-of-~~10~~-or-more 321J.2, or a
16 combination of alcohol and another drug in violation of
17 section 321J.2, the department shall revoke the person's motor
18 vehicle license or nonresident operating privilege for the
19 following periods of time:

20 a. One hundred eighty days if the person has had no
21 revocation under this chapter.

22 b. One year if the person has had a previous revocation
23 under this chapter.

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

35 4. If the peace officer serves that immediate notice, the

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

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

18 Sec. 13. Section 321J.13, subsection 2, Code Supplement
19 1997, is amended to read as follows:

20 2. The department shall grant the person an opportunity to
21 be heard within forty-five days of receipt of a request for a
22 hearing if the request is made not later than ten days after
23 receipt of notice of revocation served pursuant to section
24 321J.9 or 321J.12. The hearing shall be before the department
25 in the county where the alleged events occurred, unless the
26 director and the person agree that the hearing may be held in
27 some other county, or the hearing may be held by telephone
28 conference at the discretion of the agency conducting the
29 hearing. The hearing may be recorded and its scope shall be
30 limited to the issues of whether a peace officer had
31 reasonable grounds to believe that the person was operating a
32 motor vehicle in violation of section 321J.2 or section
33 321J.2A and either one or more of the following:

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

1 b. Whether a test was administered and the test results
 2 indicated an alcohol concentration as-defined-in equal to or
 3 in excess of the level prohibited under section 321J.1-of-.10
 4 or-more-or-whether-a-test-was-administered-and-the-test
 5 results-indicated-an-alcohol-concentration-as-defined-in
 6 section-321J.1-of-.02-or-more-pursuant-to-section 321J.2 or
 7 321J.2A.

8 c. Whether a test was administered and the test results
 9 indicated the presence of alcohol, a controlled substance or
 10 other drug, or a combination of alcohol and another drug, in
 11 violation of section 321J.2.

12 Sec. 14. Section 321J.15, Code 1997, is amended to read as
 13 follows:

14 321J.15 EVIDENCE IN ANY ACTION.

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

27 Sec. 15. Section 321J.18, Code 1997, is amended to read as
 28 follows:

29 321J.18 OTHER EVIDENCE.

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

1 motor vehicle.

2 Sec. 16. IMPLEMENTATION OF ACT. Section 25B.2, subsection
3 3, shall not apply to this Act.

4 EXPLANATION

5 This bill amends Code section 321J.1 by adding a definition
6 for "controlled substance", as used in chapter 321J, to refer
7 to drugs listed under schedule I or II of Code chapter 124.

8 This bill amends Code section 321J.2 by adding an OWI
9 offense for a person who operates a motor vehicle after taking
10 any amount of controlled substance listed in schedule I or II.
11 Conforming amendments reflecting this change are made
12 throughout Code chapter 321J.

13 This bill further amends Code section 321J.2 by adding an
14 affirmative defense to OWI charges for prescribed medication
15 when a controlled substance violation is charged. The bill
16 also adds a legal presumption regarding blood or urine
17 specimens for controlled substance violations.

18 The bill also requires that a peace officer assess each
19 operator to determine whether one or more of the operators
20 involved in the collision may have been under the influence of
21 a drug other than alcohol, or a combination of alcohol and
22 another drug. If the peace officer determines this to be the
23 case, a blood or urine test shall be requested pursuant to
24 Code section 321J.6.

25 Code section 321J.6 is amended to require a peace officer
26 to administer a blood or urine test to a person the peace
27 officer reasonably believes may be under the influence of a
28 controlled substance, a drug other than alcohol, or a
29 combination of alcohol and another controlled substance or a
30 drug. If a urine test has already been administered, but the
31 person refuses to consent to a blood test, the peace officer
32 is required to request a warrant pursuant to Code section
33 321J.10 to obtain the blood sample.

34 Other technical changes are made throughout Code chapter
35 321J.

1 This bill may include a state mandate as defined in Code
2 chapter 25B. This bill makes inapplicable Code section 25B.2,
3 which would relieve a political subdivision from complying
4 with a state mandate if funding for the cost of the state
5 mandate is not provided or specified. Therefore, political
6 subdivisions are required to comply with any state mandate
7 included in this bill.

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