

CHAPTER 47**DRAINAGE AND LEVEE DISTRICT AND WATER DISTRICT WORK - NOTICE REQUIREMENTS**

S.F. 333

AN ACT relating to notice requirements required for work involving drainage and levee districts and water districts.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 468.101, Code 1995, is amended to read as follows:

468.101 COMPLETION OF WORK - REPORT - NOTICE.

When the work to be done under ~~any a~~ a contract is completed to the satisfaction of the engineer in charge of construction, the engineer shall ~~so~~ report and certify that the contract is completed to the board, ~~which.~~ Upon receipt of the report, the board shall fix set a day to consider the report and shall give notice of the time and purpose of the meeting by ordinary mail to the ~~landowners of the district~~ owners of the land on which the work was done, and to the owners of each tract of land or lot within the district by publication in a newspaper of general circulation in the county, ~~and the.~~ The publication is not required to name the owners of any tract of land or lot within the district. The date fixed for considering the report by the board shall be not less than ten days after the date of mailing, or publication, whichever is later.

Approved April 20, 1995

CHAPTER 48**OPERATING WHILE INTOXICATED AND RELATED PROVISIONS**

S.F. 446

†AN ACT relating to the possession or use of alcohol while operating a motor vehicle by requiring the administrative revocation of driving privileges of persons under the age of twenty-one who operate a motor vehicle with an alcohol concentration of .02 or more, denying issuance of temporary restricted licenses during the period of revocation, including the revocation under implied consent provisions, providing for civil penalties, excluding the revocation from application of certain motor vehicle financial responsibility requirements, providing for minimum periods of license revocation, providing a scheduled fine for possession of an open alcohol container while operating a motor vehicle, providing for the impoundment or immobilization of motor vehicles driven or owned by person convicted of operating while intoxicated and being a second or subsequent offender, providing criminal penalties, and other related matters.

Be It Enacted by the General Assembly of the State of Iowa:

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

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

NEW UNNUMBERED PARAGRAPH. The director shall destroy any operating records pertaining to revocations for violations of section 321J.2A which are more than twelve

† Estimate of additional local revenue expenditures required by state mandate on file with the Secretary of State

years old. The twelve-year period shall commence with the date the revocation of the person's operating privileges becomes effective. This paragraph shall not apply to records of revocations which pertain to violations of section 321J.2A by persons operating a commercial motor vehicle.

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

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

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

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

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

A person driving a motor vehicle shall not knowingly possess in a motor vehicle upon a public street or highway an open or unsealed bottle, can, jar, or other receptacle containing an alcoholic beverage, wine, or beer with the intent to consume the alcoholic beverage, wine, or beer while the motor vehicle is upon a public street or highway. Evidence that an open or unsealed receptacle containing an alcoholic beverage, wine, or beer was found during an authorized search in the glove compartment, utility compartment, console, front passenger seat, or any unlocked portable device and within the immediate reach of the driver while the motor vehicle is upon a public street or highway is evidence from which the court or jury may infer that the driver intended to consume the alcoholic beverage, wine, or beer while upon the public street or highway if the inference is supported by corroborative evidence. However, an open or unsealed receptacle containing an alcoholic beverage, wine, or beer may be transported at any time in the trunk of the motor vehicle or in some other area of the interior of the motor vehicle not designed or intended to be occupied by the driver and not readily accessible to the driver while the motor vehicle is in motion. A person convicted of a violation of this paragraph is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8, subsection 10, paragraph "c".

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

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

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

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

In any proceeding regarding a revocation under this section, evidence of the results of analysis of a specimen of the defendant's blood, breath, or urine is admissible upon proof

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

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

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

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

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

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

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

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

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

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

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

8. A person whose motor vehicle license has either been revoked under this chapter, or revoked or suspended under chapter 321 solely for violations of this chapter, or who has been determined to be a habitual offender under chapter 321 based solely on violations of this chapter, and who is not eligible for a temporary restricted license under this chapter may petition the court upon the expiration of the minimum period of ineligibility for a temporary restricted license provided for under section 321J.4, 321J.9, 321J.12, or 321J.20 for an order to the department to require the department to issue a temporary restricted license to the person notwithstanding section 321.560. Upon the filing of a petition for a temporary restricted license under this section, the clerk of the district court in the county where the violation that resulted in the revocation occurred shall send notice of the petition to the department and the prosecuting attorney. The department and the prosecuting attorney shall each be given an opportunity to respond to and request a hearing on the petition. The court shall determine if the temporary restricted license is necessary for the person to maintain the person's present employment. However, a temporary restricted license shall not be ordered or issued for violations of section 321J.2A or to persons under the age of twenty-one who commit violations under section 321J.2. If the court determines that the temporary restricted license is necessary for the person to maintain the person's present employment, and that the minimum period of ineligibility for receipt of a temporary license has expired, the court shall order the department to issue to the person a temporary restricted license conditioned upon the person's certification to the court of the installation of approved ignition interlock devices in all motor vehicles that it is necessary for the person to operate to maintain the person's present employment. Section 321.561 does not apply to a person operating a motor vehicle in the manner permitted under this subsection. If the person operates a motor vehicle which does not have an approved ignition interlock device or if the person tampers with or circumvents an ignition interlock device, in addition to other penalties provided, the person's temporary restricted license shall be revoked. A person holding a temporary restricted license issued under this subsection shall not operate a commercial motor vehicle, as defined in section 321.1, on a highway if a commercial driver's license is required for the person to operate the commercial motor vehicle.

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

1. If a person is convicted of a second, third, or subsequent offense of operating while intoxicated, the court shall order that any motor vehicles owned by the person and used to commit the offense and any other motor vehicles used by the person in the commission of

the offense be impounded or immobilized. For purposes of this section, "immobilized" means the installation of a device that completely prevents a motor vehicle from being operated, or the installation of an ignition interlock device, of a type approved by the commissioner of public safety, in a motor vehicle.

2. The order shall specify all of the following:

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

b. The period of impoundment or immobilization.

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

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

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

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

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

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

8. Upon receipt of the court order for impoundment or immobilization and seizure of the motor vehicle, if the agency responsible for carrying out the order determines that the motor vehicle is to be impounded, the agency shall review the value of the vehicle in relation to the costs associated with the period of impoundment of the motor vehicle specified in the order. If the agency determines that the costs of impoundment of the motor vehicle exceed the actual wholesale value of the motor vehicle, the agency may treat the vehicle as an abandoned vehicle pursuant to section 321.89. If the agency elects to treat the motor vehicle as abandoned, the agency shall notify the registered owner of the motor vehicle that the vehicle shall be deemed abandoned and shall be sold in the manner provided in section 321.89 if payment of the total cost of impoundment is not received within twenty-one days of the mailing of the notice. The agency shall provide documentation

regarding the valuation of the vehicle and the costs of impoundment. This paragraph shall not apply to vehicles that are immobilized pursuant to this section or if subsection 15 or 16 applies.

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

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

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

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

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

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

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

15. Notwithstanding the requirements of this section, if the owner of the motor vehicle is not the person who is convicted of the offense which resulted in the issuance of the order of impoundment or immobilization or the owner of the motor vehicle is a motor

vehicle rental or leasing company, the owner, the owner's designee, or the rental or leasing company shall be permitted to submit a claim for return of the motor vehicle within twenty-four hours from receipt of the order for impoundment or immobilization. Upon learning the address or phone number of a rental or leasing company which owns a motor vehicle, the peace officer, county attorney, or attorney general shall immediately contact the company to inform the company that the vehicle is available for return to the company. The vehicle shall be returned to the owner, owner's designee, or rental or leasing company and the order for impoundment or immobilization shall be rescinded with respect to the particular motor vehicle, if the owner or owner's designee can prove to the satisfaction of the court that the owner did not know or should not have known that the vehicle was to be used in the commission of the offense of operating while intoxicated, or if the rental or leasing company did not know, should not have known, and did not consent to the operation of the motor vehicle used in the commission of the offense of operating while intoxicated. For purposes of this section, unless the person convicted of the offense which results in the imposition of the order for impoundment or immobilization is not in lawful possession of the motor vehicle used in the commission of the offense, an owner of a motor vehicle shall be presumed to know that the vehicle was to be used by the person who is convicted of the offense, in the commission of the offense of operating while intoxicated.

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

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

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

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

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

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

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

321J.5 PRELIMINARY SCREENING TEST.

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

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

b. The operator has been involved in a motor vehicle collision resulting in injury or

~~death, the peace officer may request the operator to provide a sample of the operator's breath for a preliminary screening test using a device approved by the commissioner of public safety for that purpose.~~

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

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

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

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

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

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

321J.8 STATEMENT OF OFFICER.

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

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

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

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

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

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

321J.9 REFUSAL TO SUBMIT - REVOCATION.

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

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

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

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

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

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

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

321J.12 TEST RESULT REVOCATION.

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

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

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

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

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

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

department along with the officer's certificate indicating that the test results indicated an alcohol concentration of .10 or more.

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

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

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

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

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

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

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

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

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

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

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

321J.15 EVIDENCE IN ANY ACTION.

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

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

321J.16 PROOF OF REFUSAL ADMISSIBLE.

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

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

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

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

b. The person's motor vehicle license is revoked under section 321J.9 and the person has entered a plea of guilty on a charge of a violation of section 321J.2 which arose from the same set of circumstances which resulted in the person's motor vehicle license

revocation under section 321J.9 and the guilty plea is not withdrawn at the time of or after application for the temporary restricted license, and the minimum period of ineligibility for issuance of a temporary restricted license has expired.

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

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

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

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

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

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

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

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

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

Approved April 20, 1995

CHAPTER 49

SUBSTANTIVE CODE CORRECTIONS

S.F. 88

AN ACT relating to statutory corrections which may adjust language to reflect current practices, insert earlier omissions, delete redundancies and inaccuracies, delete temporary language, resolve inconsistencies and conflicts, update ongoing provisions, or remove ambiguities.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 17A.8, subsection 9, Code 1995, is amended to read as follows:

9. Upon a vote of two-thirds of its members, the administrative rules review committee may delay the effective date of a rule until the adjournment of the next regular session of the general assembly. The committee shall refer a rule whose effective date has been delayed to the speaker of the house of representatives and the president of the senate who shall refer the rule to the appropriate standing committees of the general assembly. If the general assembly has not disapproved of the rule by a joint resolution, the rule shall become effective. The speaker of the house of representatives and the president of the senate shall notify the administrative code editor of the final disposition of each rule delayed