

Reprinted 2/13

HOUSE FILE 2369

FEB 19 1982

BY COMMITTEE ON JUDICIARY AND
LAW ENFORCEMENT

Place On Calendar

(Formerly House File 2079)

Passed House, Date 3-2-82 (p. 540) Passed Senate, Date 4-16-82 (RS5)

Vote: Ayes 97 Nays 0 Vote: Ayes 45 Nays 0

Approved May 2, 1982

A BILL FOR

1 An Act to revise the crime of operating a motor vehicle
 2 while under the influence of an alcoholic beverage or
 3 drug or with a certain amount of alcohol in the blood
 4 and the provisions for chemical testing, sentencing,
 5 penalties and license revocation relating to that
 6 offense and making it effective upon publication.

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

- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

2369

1 Section 1. Section 321.209, subsection 2, Code 1981, is
2 amended by striking the subsection and inserting in lieu
3 thereof the following:

4 2. Operating a motor vehicle in violation of section
5 321.281.

6 Sec. 2. Section 321.212, unnumbered paragraph 1, Code
7 1981, is amended to read as follows:

8 Except as provided in section 321.513 the department shall
9 not suspend a license for a period of more than one year,
10 except that a license suspended because of incompetency to
11 drive a motor vehicle shall be suspended until the department
12 receives satisfactory evidence that the former holder is
13 competent to operate a motor vehicle and a refusal to reinstate
14 shall constitute a denial of license within the provisions
15 of section 321.215; upon revoking a license the department
16 shall not grant an application for a new license until the
17 expiration of one year after the revocation, unless another
18 period is specified by law.

19 Sec. 3. Section 321.281, Code 1981, as amended by Acts
20 of the Sixty-ninth General Assembly, 1981 Session, chapter
21 103, section 6, is amended by striking the section and
22 inserting in lieu thereof the following:

23 321.281 OPERATING WHILE INTOXICATED OR DRUGGED--COPY OF
24 JUDGMENT TO DEPARTMENT--COMMITMENT OF DEFENDANT FOR TREATMENT.

25 1. A person shall not operate a motor vehicle upon the
26 public highways of this state in either of the following
27 conditions:

28 a. While under the influence of an alcoholic beverage,
29 a narcotic, hypnotic, or other drug, or any combination of
30 such substances.

31 b. While having thirteen hundredths or more of one percent
32 by weight of alcohol in the blood.

33 2. A person convicted of a violation of this section,
34 upon conviction or a plea of guilty, is guilty of:

35 a. A serious misdemeanor for the first offense and shall

1 be imprisoned in the county jail for not less than forty-eight
2 consecutive hours, less time credited for hours served after
3 arrest.

4 b. An aggravated misdemeanor for a second offense committed
5 within a six-year period and shall be imprisoned in the county
6 jail not less than seven days.

7 c. A class "D" felony for a third offense and each
8 subsequent offense committed within a six-year period.

9 3. A person shall not be convicted and sentenced for
10 violations of both paragraphs a and b of subsection 1 if the
11 offenses were committed in the same occurrence.

12 4. In lieu of, or prior to imposition of, the punishment
13 for a second, third, or subsequent offense in violation of
14 this section, the court upon hearing may commit the defendant
15 for treatment of alcoholism or drug addiction or dependency
16 to any hospital or institution in Iowa providing such
17 treatment. The court may prescribe the length of time for
18 the treatment or it may request that the hospital to which
19 the person is committed immediately report to the court when
20 the person has received maximum benefit from the program of
21 the hospital or institution or has recovered from the person's
22 addiction, dependency, or tendency to chronically abuse alcohol
23 or drugs. A person committed under this section who does
24 not possess sufficient income or estate to make payment of
25 the costs of the treatment in whole or in part shall be
26 considered a state patient and the costs of treatment shall
27 be paid as provided in section 125.44.

28 5. The clerk of court shall immediately certify to the
29 department a true copy of the judgment sentencing the defendant
30 under this section.

31 6. If the court defers judgment pursuant to section 907.3
32 for an offense under this section, the court shall order that
33 the defendant's license to operate a motor vehicle be revoked
34 for a period of not less than thirty days nor more than ninety
35 days, during which time no new license to operate a motor

1 vehicle shall be issued to the defendant. The court shall
2 immediately require the defendant to surrender to it all
3 operator's or chauffer's licenses held by the defendant which
4 the court shall forward to the department with a copy of the
5 order deferring judgment. A person whose license to operate
6 a motor vehicle is revoked pursuant to this subsection may
7 be issued a temporary driving permit by the department
8 restricted to driving to and from the person's home and place
9 of employment and in the person's employment, if the person's
10 license to operate a motor vehicle is not subject to revocation
11 pursuant to section 321B.7 for refusal to submit to chemical
12 testing.

13 7. This section does not apply to a person operating a
14 motor vehicle while under the influence of a narcotic,
15 hypnotic, or other drug if such substances were prescribed
16 for the person and were taken under the prescription and in
17 accordance with the directions of a medical practitioner as
18 defined in section 155.3, subsection 11, if there is no
19 evidence of the consumption of alcohol and the medical
20 practitioner had not directed the person to refrain from
21 operating a motor vehicle.

22 8. Upon the trial of a prosecution in which it is alleged
23 that the defendant was operating a motor vehicle while under
24 the influence of an alcoholic beverage, evidence that there
25 was, at the time, ten hundredths or more of one percent by
26 weight of alcohol in the blood shall be admitted as presumptive
27 evidence that the defendant was under the influence of an
28 alcoholic beverage. In any prosecution under this section,
29 upon proof of a proper foundation for the analysis, the results
30 of analysis of a specimen of the defendant's blood, breath,
31 saliva, or urine shall be admitted as conclusive evidence
32 of the amount of alcohol in the defendant's blood.

33 Sec. 4. Section 321.282, Code 1981, is amended to read
34 as follows:

35 321.282 VIOLATIONS. ~~if~~-any A person who whose license

1 or privilege to operate is revoked or denied because the
 2 person has been convicted or has pleaded guilty to driving
 3 or operating a motor vehicle upon the public highways of this
 4 state while in an intoxicated condition a violation of section
 5 321.281 or is revoked under subsection 6 of that section who
 6 is found driving or operating any motor vehicle in violation
 7 of the provisions of sections 321.174 and 321.209 the person
 8 shall be upon a highway in this state is guilty of a simple
 9 serious misdemeanor, notwithstanding section 321.218.

10 Sec. 5. Section 321.283, subsections 2, 3, and 4, Code
 11 1981, are amended to read as follows:

12 2. COURT ORDER. After the a conviction of a person for
 13 operating a motor vehicle while under the influence of an
 14 alcoholic beverage a violation of section 321.281, the court
 15 in addition to its power to commit the defendant for treatment
 16 of alcoholism under section 321.281, may in lieu of, or prior
 17 to or after the imposition of punishment for a first offense
 18 or prior to or after the imposition of punishment for any
 19 subsequent offense, order the defendant, at his the defendant's
 20 own expense, to enroll in, attend and successfully complete
 21 a course for drinking drivers. The court may also require
 22 the defendant to seek treatment or rehabilitation services
 23 under section 125.33 at the defendant's expense and to furnish
 24 evidence of successful completion. A copy of the order shall
 25 be forwarded to the department.

26 3. REFERRED ON CONVICTION. After any a conviction for
 27 operating a motor vehicle while under the influence of an
 28 alcoholic beverage under a violation of section 321.281, the
 29 court may refer the defendant for treatment at a facility
 30 as defined in sections 125.1 to 125.43 and designated by the
 31 Iowa department of substance abuse. The court may prescribe
 32 the length of time for treatment or it may be left to the
 33 discretion of the facility to which the defendant was referred.
 34 A person referred under this section who is does not possessed
 35 of possess sufficient income or estate to enable him or her

1 the person to make payment of the costs of such treatment
2 in whole or in part is a state patient, and costs for treatment
3 shall be paid as provided in section 125.44.

4 4. LICENSE REVOKED. When the court orders a person to
5 enroll, attend and successfully complete a course for drinking
6 drivers or complete treatment or rehabilitation services,
7 the court shall also order ~~that-the~~ revocation of the person's
8 drivers license shall-be for an-indefinite the period specified
9 in section 321.281, subsection 5, and until the required
10 course is successfully completed and proof of completion has
11 been filed with the department and the provisions of chapter
12 321A have been complied with.

13 Sec. 6. Section 321.283, subsection 7, unnumbered paragraph
14 2, Code 1981, is amended to read as follows:

15 Enrollment in the courses shall not be limited to persons
16 ordered to enroll, attend and successfully complete the course
17 ~~under the-provisions-of~~ subsection 2, and any person convicted
18 ~~of operating-a-motor-vehicle-while-under-the-influence-of~~
19 ~~an-alcoholic-beverage~~ a violation of section 321.281 who was
20 not ordered to enroll, ~~shall-be-allowed-to~~ in a course may
21 enroll in and attend a course for drinking drivers.

22 Sec. 7. Section 321.555, subsection 1, paragraph b, Code
23 1981, is amended to read as follows:

24 b. ~~Driving~~ Operating a motor vehicle ~~while-under-the~~
25 ~~influence-of-an-alcoholic-beverage-or-a-controlled-substance~~
26 ~~as-defined-in-section-204-101~~ in violation of section 321.281.

27 Sec. 8. Chapter 321B, Code 1981, is amended by adding
28 the following new section:

29 NEW SECTION. PRELIMINARY SCREENING TEST. When a peace
30 officer has reasonable grounds to believe from the manner
31 in which a person is operating a motor vehicle, or has operated
32 a motor vehicle, that the operator may be violating or has
33 violated section 321.281, or the operator has been involved
34 in a motor vehicle collision resulting in injury or death,
35 the peace officer may request the operator to provide a sample

1 of the operator's breath for a preliminary screening test
2 using a device approved by the commissioner of public safety
3 for that purpose. The results of this preliminary screening
4 test may be used for the purpose of deciding whether an arrest
5 should be made and whether to request a chemical test
6 authorized in this chapter, but shall not be used in any court
7 action except to prove that a chemical test was properly
8 requested of a person pursuant to this chapter.

9 Sec. 9. Chapter 321B, Code 1981, is amended by adding
10 the following new section:

11 NEW SECTION. TEST RESULT REVOCATION. Upon certification
12 by the peace officer that there existed reasonable grounds
13 to believe the person to have been operating a motor vehicle
14 in violation of section 321.281 and that the person submitted
15 to chemical testing and the test results indicate ten
16 hundredths or more of one percent by weight of alcohol in
17 the person's blood, the department shall revoke the person's
18 license or permit to drive or nonresident operating privilege
19 for a period of one hundred twenty days if the person has
20 no previous revocation under section 321.281 or chapter 321B,
21 two hundred forty days if the person has one previous
22 revocation under those provisions, and one year if the person
23 has two or more revocations under those provisions.

24 The effective date of the revocation shall be twenty days
25 after the department has mailed notice of revocation to the
26 person by registered or certified mail or, on behalf of the
27 department, a peace officer offering a chemical test or
28 directing the administration of a chemical test may serve
29 immediate notice of intention to revoke and of revocation
30 on a person when the person's test results indicate ten
31 hundredths or more of one percent by weight of alcohol in
32 the blood.

33 If the peace officer serves that immediate notice, the
34 peace officer shall take the Iowa license or permit of the
35 driver, if any, and issue a temporary license valid only for

1 twenty days. The peace officer shall immediately send the
2 person's driver's license to the department along with an
3 affidavit stating that the test results indicate ten hundredths
4 of one percent or more by weight of alcohol in the person's
5 blood.

6 The department may, on application, issue a temporary
7 restricted license to a person whose license has been revoked
8 under this section when the person's regular employment
9 includes the operation of a motor vehicle or who cannot perform
10 his or her regular occupation without the use of a motor
11 vehicle, but the person shall not operate a vehicle for
12 pleasure while holding a restricted license. However, this
13 paragraph does not apply to a person whose license is suspended
14 or revoked for another reason. Chapter 321A does not apply
15 to revocation under this section.

16 Sec. 10. Section 321B.1, Code 1981, is amended to read
17 as follows:

18 321B.1 DECLARATION OF POLICY. The general assembly hereby
19 ~~determines-and~~ declares that ~~the-provisions-of~~ this chapter
20 are is necessary in-order-to-control-alcoholic-beverages-and
21 to aid the enforcement of laws prohibiting operation of a
22 motor vehicle while under the influence of an alcoholic
23 beverage, a narcotic, hypnotic, or other drug or any
24 combination of such substances, or while having a certain
25 amount of alcohol in the blood.

26 Sec. 11. Section 321B.2, Code 1981, is amended by adding
27 the following new unnumbered paragraph:

28 NEW UNNUMBERED PARAGRAPH. As used in this chapter "arrest"
29 also includes a taking into custody pursuant to section 232.19.

30 Sec. 12. Section 321B.3, Code 1981, is amended to read
31 as follows:

32 321B.3 IMPLIED CONSENT TO TEST. Any person who operates
33 a motor vehicle in this state upon a public highway, under
34 ~~such~~ circumstances ~~as-to~~ which give reasonable grounds to
35 believe the person to have been operating a motor vehicle

1 ~~while-under-the-influence-of-an-alcoholic-beverage~~ in violation
 2 of section 321.281, shall-be is deemed to have given consent
 3 to the withdrawal ~~from-his-body~~ of specimens of ~~his~~ the
 4 person's blood, breath, saliva, or urine, and to a chemical
 5 test or tests ~~thereof,~~ of the specimens for the purpose of
 6 determining the alcoholic content of ~~his~~ the blood, subject
 7 to ~~the-provisions-hereinafter-set-out~~ this section. The
 8 withdrawal of ~~such~~ the body substances, and the test or tests
 9 ~~thereof,~~ shall be administered at the written request of a
 10 peace officer having reasonable grounds to believe the person
 11 to have been operating a motor vehicle ~~upon-a-public-highway~~
 12 ~~of-this-state-while-under-the-influence-of-an-alcoholic~~
 13 beverage in violation of section 321.281, and only-after-the
 14 peace-officer-has-placed-such-person-under-arrest-for-the
 15 offense-of-operating-a-motor-vehicle-while-under-the-influence
 16 of-an-alcoholic-beverage if any of the following conditions
 17 exist:

18 1. A peace officer has lawfully placed the person under
 19 arrest for violation of section 321.281.

20 2. The person has been involved in a motor vehicle accident
 21 or collision resulting in personal injury or death.

22 3. The person has refused to take a preliminary breath
 23 screening test provided by this chapter.

24 4. The preliminary breath screening test was administered
 25 and it recorded ten hundredths or more of one percent by
 26 weight of alcohol in the blood.

27 PARAGRAPH DIVIDED. The peace officer shall determine which
 28 of the four substances, breath, blood, saliva, or urine, shall
 29 be tested. Refusal to submit to a chemical test of urine,
 30 saliva or breath ~~shall-be is~~ deemed a refusal to submit, and
 31 ~~the-provisions-of~~ section 321B.7 ~~shall-apply~~ applies. A
 32 refusal to submit to a chemical test of blood ~~shall is~~ not
 33 be deemed a refusal to submit, but in that case, the peace
 34 officer shall then determine which one of the other three
 35 substances shall be tested, and shall offer ~~such~~ the test.

1 If ~~such~~ the peace officer fails to provide a test within two
2 hours after ~~such~~ the preliminary screening test is administered
3 or refused or the arrest is made, whichever occurs first,
4 no a test shall-be is not required, and there shall be no
5 revocation under ~~the provisions of~~ section 321B.7.

6 If there has been an accident in which a person has been
7 killed or in which a person has been injured and there is
8 a reasonable likelihood that the person may die as a result
9 of the injuries sustained in the accident, and there exists
10 reasonable grounds for believing that another person involved
11 in the accident has violated section 707.5 or section 321.281,
12 a test may be administered without the consent of the person
13 suspected of violating section 707.5 or section 321.281.
14 If the person submits voluntarily to the test there shall
15 be no revocation for refusal to consent under section 321B.7.

16 Sec. 13. Section 321B.4, Code 1981, is amended to read
17 as follows:

18 321B.4 TAKING SAMPLE FOR TEST. Only a licensed physician,
19 ~~or a~~ physician's assistant as defined in section 148C.1,
20 subsection 6, medical technologist or registered nurse
21 ~~designated by a licensed physician as his representative,~~
22 acting at the ~~written~~ request of a peace officer may withdraw
23 ~~such~~ body substances for the purpose of determining the
24 alcoholic or drug content of the person's blood. However,
25 any peace officer, using devices and methods approved by the
26 commissioner of public safety, may take a specimen of a
27 person's breath or urine for the purpose of determining the
28 alcoholic or drug content of the person's blood. Only new,
29 originally factory wrapped, disposable syringes and needles,
30 kept under strictly sanitary and sterile conditions shall
31 be used for drawing blood. ~~Such~~ The person may have an
32 independent chemical test or tests administered in addition
33 to any administered at the direction of a peace officer.
34 The failure or inability of the person to obtain an independent
35 chemical test or tests ~~shall~~ does not preclude the admission

1 in evidence of the results of the test or tests taken at the
 2 direction of the peace officer. Upon the request of the
 3 person who is tested, the results of the test or tests taken
 4 at the direction of the peace officer shall be made available
 5 to ~~him~~ the person.

6 Sec. 14. Section 321B.5, Code 1981, is amended to read
 7 as follows:

8 321B.5 DEAD OR UNCONSCIOUS PERSONS. Any person who is
 9 dead, unconscious or who is otherwise in a condition rendering
 10 ~~him~~ the person incapable of consent or refusal ~~shall be~~ is
 11 deemed not to have withdrawn the consent provided by section
 12 321B.3, and the test may be given; provided that a licensed
 13 physician shall certify in advance of such test that such
 14 person is dead, unconscious or otherwise in a condition
 15 rendering ~~him~~ that person incapable of consent or refusal.
 16 ~~in such case such condition shall obviate the requirements~~
 17 ~~of arrest and advise pursuant to section 321B.6.~~

18 Sec. 15. Section 321B.6, Code 1981, is amended to read
 19 as follows:

20 321B.6 STATEMENT OF OFFICER. A peace officer shall advise
 21 any person who is requested to take any chemical test that
 22 a refusal to submit to such test will result in revocation
 23 of the person's license or privilege to operate a motor
 24 vehicle, ~~provided, however, that this requirement shall.~~
 25 A peace officer shall advise a person prior to the submission
 26 to a chemical test that if the results indicate ten hundredths
 27 or more of one percent by weight of alcohol in the blood the
 28 department will revoke the person's license or privilege to
 29 operate a motor vehicle. The peace officer shall advise the
 30 person of the periods of revocation applying for both reasons
 31 for revocation. The requirements of this section do not apply
 32 in the case of any person referred to in section 321B.5.

33 Sec. 16. Section 321B.7, Code 1981, is amended by adding
 34 the following new unnumbered paragraph:

35 NEW UNNUMBERED PARAGRAPH. The department, upon application,

1 may issue a temporary restricted license to a person whose
2 privilege to drive has been revoked or denied under this
3 section. The license shall not be issued under this section
4 or section 321B.9 if a collision or accident involving that
5 person and causing personal injury or death was in the chain
6 of events leading to the revocation or if the person has a
7 previous conviction for a violation of section 321.281. If
8 the person's regular employment is the operation of a motor
9 vehicle or if the person's occupation cannot be adequately
10 performed without the use of a motor vehicle, the restricted
11 licensee shall not operate a motor vehicle for pleasure while
12 holding the restricted license. If the person does not need
13 to operate a vehicle for the person's occupation, but the
14 revocation or denial constitutes a case of extreme hardship
15 because alternate means of transportation for the person to
16 and from work do not exist, the temporary restricted license
17 shall be restricted for travel to and from work at times
18 specified on the license. A person who operates a motor
19 vehicle in violation of the restrictions of the person's
20 temporary restricted license is guilty of a simple misdemeanor.
21 Chapter 232 has no application in the prosecution of this
22 offense. A temporary restricted license shall be canceled
23 upon the licensee's conviction of a moving traffic violation
24 or upon the licensee's violation of the terms of the license.
25 Sec. 17. Section 321B.7, Code 1981, is amended to read
26 as follows:

27 321B.7 REFUSAL TO SUBMIT. If a person ~~under-arrest~~ refuses
28 to submit to the chemical testing, no a test shall not be
29 given, but the ~~director~~ department, upon the receipt of a
30 sworn report of the peace officer that ~~he-or-she~~ the officer
31 had reasonable grounds to believe the arrested person to have
32 been operating a motor vehicle ~~upon-a-public-highway-of-this~~
33 ~~state-while-under-the-influence-of-an-alcoholic-beverage,~~
34 ~~that-he-or-she-had-placed-such-person-under-arrest-for-the~~
35 ~~offense-of-operating-a-motor-vehicle-while-under-the-influence~~

1 ~~of-an-alcoholic-beverage~~ in violation of section 321.281,
2 the conditions existing which gave implied consent for chemical
3 testing pursuant to section 321B.3, and that the person had
4 refused to submit to the chemical testing, shall revoke ~~his~~
5 ~~or-her~~ the person's license or permit to drive and any
6 nonresident operating privilege for a period of ~~not-less-than~~
7 ~~one-hundred-twenty-days-not-more-than~~ one year; or if the
8 person is a resident without a license or permit to operate
9 a motor vehicle in this state, the ~~director~~ department shall
10 deny to the person the issuance of a license or permit within
11 one year from the date of the alleged violation, subject to
12 review as ~~hereinafter~~ provided in this chapter. The effective
13 date of ~~any-such~~ revocation shall be twenty days after the
14 ~~director~~ department has mailed notice of ~~such~~ revocation to
15 ~~such~~ the person by registered or certified mail or, on behalf
16 of the department, a peace officer offering or directing the
17 administration of a chemical test may serve immediate notice
18 of intention to revoke and of revocation on a person who
19 refuses to permit chemical testing. If the peace officer
20 serves that immediate notice, the peace officer shall take
21 the Iowa license or permit of the driver, if any, and issue
22 a temporary license effective for only twenty days. The peace
23 officer shall immediately send the person's license to the
24 department along with an affidavit indicating the person's
25 refusal to submit to chemical testing.

26 Sec. 18. Section 321B.8, Code 1981, is amended to read
27 as follows:

28 321B.8 HEARING. Upon the written request of a person
29 whose privilege to drive has been revoked or denied, whose
30 application for a temporary restricted license has been denied,
31 or who has been issued a temporary license other than a
32 temporary restricted license pursuant to section 9 of this
33 Act or section 321B.7, the director department shall grant
34 the person an opportunity to be heard within twenty days after
35 the receipt of the request, but the request must be made

1 within ~~thirty~~ ten days of the effective date of revocation
2 or denial of driving privileges or the issuance of a temporary
3 permit. The hearing shall be before the ~~director,~~ department
4 in the county ~~wherein~~ where the alleged events occurred ~~for~~
5 ~~which-the-person-was-arrested~~, unless the director and the
6 person agree that the hearing may be held in some other county.
7 The hearing may be recorded and its scope shall cover the
8 issues of whether a peace officer had reasonable grounds to
9 believe the person to have been operating a motor vehicle
10 ~~upon-a-public-highway-of-this-state-while-under-the-influence~~
11 ~~of-an-alcoholic-beverage,-whether-the-person-was-placed-under~~
12 ~~arrest-and~~ in violation of section 321.281, whether he the
13 person refused to submit to the test or tests, the test results
14 if a person consented to a test and whether the person should
15 be issued a temporary restricted license. The ~~director~~
16 department shall order that the revocation or denial be either
17 rescinded or sustained.

18 Sec. 19. Section 321B.9, Code 1981, is amended to read
19 as follows:

20 321B.9 JUDICIAL REVIEW--TEMPORARY RESTRICTED PERMIT ISSUED.

21 1. JURISDICTION. Judicial review of ~~the-actions~~ an action
22 of the ~~director~~ department may be sought in accordance with
23 the terms of the Iowa administrative procedure Act.
24 Notwithstanding the terms of said Act, ~~petitions~~ a petition
25 for judicial review may be filed in the district court in
26 the county wherein the alleged events occurred for which the
27 licensee was arrested or in the county in which the
28 administrative hearing was held. If judicial review is sought
29 of the department's refusal to issue a temporary restricted
30 license, as provided in section 321B.8, a petition for review
31 may alternatively be filed in the district court of the
32 licensee's county of residence.

33 2. TEMPORARY RESTRICTED PERMIT. Upon the revocation or
34 denial of a person's privilege to drive under section 321B.7
35 and upon the denial by the department of an application for

1 a temporary restricted license, a person may apply to the
2 appropriate district court for a temporary restricted permit
3 to operate a motor vehicle. The application shall be made
4 to the court prior to the filing of a written request to the
5 department for a hearing as provided in section 321B.8, or,
6 if such a request has been filed, after the order resulting
7 from the hearing has been issued. The application for a
8 temporary restricted permit shall be granted only if all the
9 following criteria are satisfied:

10 a. The temporary restricted permit is requested for a
11 case of extreme hardship where alternative means of
12 transportation does not exist.

13 b. The permit applicant has not made an application for
14 such a permit which was denied or revoked in any other district
15 court in the state.

16 c. The permit is restricted for travel to and from work
17 at times specified in the permit. The permit may also be
18 restricted for use during work if the applicant's regular
19 employment is the operation of a motor vehicle or if the
20 applicant's occupation cannot be adequately performed without
21 the use of a motor vehicle.

22 The district court shall forward a record of each
23 application for a temporary restricted permit to the
24 department, together with the results of the disposition of
25 the application by the court.

26 A temporary restricted permit shall be canceled upon the
27 permit holder's conviction of a moving traffic violation or
28 upon the permit holder's violation of the terms of the permit.
29 A person who operates a motor vehicle in violation of the
30 restrictions of the person's temporary restricted permit is
31 guilty of a simple misdemeanor. Chapter 232 has no application
32 in the prosecution of this offense.

33 Sec. 20. Section 321B.10, Code 1981, is amended to read
34 as follows:

35 321B.10 EVIDENCE IN ANY ACTION. Upon the trial of any

1 civil or criminal action or proceeding arising out of acts
2 alleged to have been committed by any person while operating
3 a motor vehicle ~~upon-a-public-highway-of-this-state-while~~
4 ~~under-the-influence-of-an-alcoholic-beverage~~ in violation
5 of section 321.281, evidence of the amount of alcohol or drugs
6 in the person's blood at the time of the act alleged as shown
7 by a chemical analysis of ~~his~~ the person's blood, breath,
8 saliva or urine is admissible.

9 Sec. 21. Section 321B.11, Code 1981, is amended to read
10 as follows:

11 321B.11 PROOF OF REFUSAL ADMISSIBLE. If the person ~~under~~
12 ~~arrest~~ refuses to submit to the test or tests, proof of refusal
13 ~~shall-be~~ is admissible in any civil or criminal action or
14 proceeding arising out of acts alleged to have been committed
15 while the person was operating a motor vehicle ~~upon-a-public~~
16 ~~highway-of-this-state-while-under-the-influence-of-an-alcoholic~~
17 ~~beverage~~ in violation of section 321.281.

18 Sec. 22. Section 321B.15, Code 1981, is amended to read
19 as follows:

20 321B.15 DRIVING WHILE LICENSE DENIED OR REVOKED. Any
21 person whose license~~7~~ or driving privilege~~7~~ has been denied
22 or revoked as provided in this chapter~~7~~ and who drives any
23 motor vehicle upon the highways of this state while ~~such~~ the
24 license or privilege is denied or revoked~~7~~ is guilty of a
25 ~~simple~~ serious misdemeanor ~~and-upon-conviction-shall-be~~
26 ~~punished-as-provided-for-simple-misdemeanors-in-section~~
27 321-482, notwithstanding section 321.218. The department,
28 upon receiving the record of the conviction of any person
29 under this section upon a charge of driving a motor vehicle
30 while the license of ~~such~~ the person was revoked or denied,
31 shall extend the period of revocation for an additional like
32 period, and the department shall not issue a new license
33 during ~~such~~ the additional period.

34 Sec. 23. Section 602.60, unnumbered paragraph 1, Code
35 1981, is amended to read as follows:

1 Judicial magistrates ~~shall~~ have jurisdiction of simple
2 misdemeanors, including traffic and ordinance violations,
3 preliminary hearings, search warrant proceedings, and small
4 claims. They ~~shall~~ also have jurisdiction to exercise the
5 powers specified in sections 644.2 and 644.12 and the power
6 to hear complaints, or preliminary informations, issue
7 warrants, order arrests, make commitments and take bail.
8 They also have jurisdiction of first offense violations of
9 section 321.281 but only to the extent that they may approve
10 trial informations, conduct arraignments, accept guilty pleas
11 and sentence those pleading guilty. They ~~shall-have-power~~
12 to may act any place within the judicial district as directed,
13 and venue shall be the same as in other district court
14 proceedings.

15 Sec. 24. Section 602.62, Code 1981, is amended to read
16 as follows:

17 602.62 PROCEDURE. The criminal procedure before judicial
18 magistrates shall be as provided in chapters 804, 806, 808,
19 811, 820 and 821 and in R.Cr.P. 2, 5, 7, 8 and 32 to 46.
20 The civil procedure before judicial magistrates shall be as
21 provided in chapters 631 and 648.

22 Sec. 25. Section 907.3, unnumbered paragraph 1, Code 1981,
23 is amended to read as follows:

24 Pursuant to section 901.5, the trial court may, upon a
25 plea of guilty, a verdict of guilty, or a special verdict
26 upon which a judgment of conviction may be rendered, exercise
27 any of the options contained in subsections 1 and 2 of this
28 section. However, this section shall not apply to a forcible
29 felony. This section also does not apply to a violation of
30 section 321.281 if, within the previous six years, either
31 the person has been convicted of that section or the person's
32 driving record the person's driving record indicates a previous
33 driver's license revocation pursuant to that section or chapter
34 321B.

35 Sec. 26. This Act, being deemed of immediate importance,

1 takes effect from and after its publication in The Belmond
2 Independent, a newspaper published in Belmond, Iowa, and in
3 the Le Mars Daily Sentinel, a newspaper published in Le Mars,
4 Iowa.

5 EXPLANATION

6 This bill revises statutes relating to the crime of
7 operating a motor vehicle while under the influence of an
8 alcoholic beverage or drug or with a certain amount of alcohol
9 in the blood (OMVUI) and the consequences of an arrest and
10 conviction for that crime.

11 Several sections change the references from "operating
12 a motor vehicle while under the influence of an alcoholic
13 beverage" to "a violation of section 321.281" to include a
14 violation by having a certain amount of alcohol in the blood
15 or by being under the influence of a drug.

16 Section 321.281 is rewritten (OMVUI) to provide that being
17 under the influence and having a certain amount of alcohol
18 in the blood are two methods of committing the same offense
19 and that either method can be counted in determining a first,
20 second, or third offense. If both methods are present in
21 the same occurrence, it is one offense. The rewritten section
22 changes the mandatory minimum jail sentence for the first
23 offense from two days to forty-eight consecutive hours less
24 hours served after arrest. The section removes the authority
25 for the court to revoke the driver's license after a
26 conviction. The section provides that if a proper foundation
27 is proved, the result of a chemical analysis is conclusive
28 evidence as to the amount of alcohol in the blood.

29 The penalty for driving with an OMVUI revoked license is
30 increased to a serious misdemeanor.

31 The bill provides that a court may require a person
32 convicted of OMVUI to complete substance abuse treatment or
33 rehabilitation services and the court shall revoke the license
34 until the treatment is completed.

35 The bill provides that a peace officer may request a

1 preliminary screening test for the purpose of determining
2 if a chemical test is required.

3 The bill provides for revocation of a license if a chemical
4 test shows ten hundredths of one percent or more of alcohol
5 in the blood by weight. The period of revocation runs from
6 one hundred twenty days to one year depending upon the number
7 of prior revocations under section 321.281 or chapter 321B.
8 The officer administering the chemical test is authorized
9 to take the person's license, serve an immediate notice of
10 intent to revoke and issue a temporary license valid for
11 twenty days.

12 The bill provides that an arrest under the implied consent
13 chapter includes a taking into custody under the juvenile
14 justice code.

15 Section 12 provides that an officer can require a chemical
16 test if the person has been arrested for OMVUI, has been in
17 an accident causing personal injury or death, has refused
18 the preliminary screening test or has taken the preliminary
19 screening test and it indicated ten hundredths of one percent
20 or more of alcohol in the blood. The section also provides
21 that a chemical test may be given without the person's consent
22 if the person has been in an accident in which another person
23 has died or is reasonably likely to die and the person is
24 suspected of committing OMVUI or involuntary manslaughter.

25 The bill allows a physician's assistant to give the chemical
26 test.

27 The bill requires a peace officer to advise a person of
28 the periods of revocation for refusing a chemical test and
29 if the chemical tests indicate ten hundredths of one percent
30 or more of alcohol in the blood by weight.

31 The bill allows the department to issue a temporary
32 restricted license for work purposes when a license is revoked
33 for refusal to consent to a chemical test if the person was
34 not involved in an accident causing personal injury or death
35 and the person does not have a previous OMVUI conviction.

1 Section 17 increases the period of revocation for refusal
2 to consent to a chemical test to one year and provides that
3 the officer may take the license, give immediate notice of
4 intent to revoke, and issue a temporary license valid for
5 twenty days.

6 Coordinating amendments for the hearing and judicial review
7 of a license revocation or the denial of a temporary restricted
8 license under the implied consent chapter are provided.

9 Section 22 increases the penalty for driving with a license
10 revoked under the implied consent chapter to a serious
11 misdemeanor.

12 The bill allows a judicial magistrate to approve trial
13 informations, conduct arraignments, accept guilty pleas and
14 sentence those pleading guilty for the first offense of OMVUI.

15 Section 25 provides that a deferred judgment or sentence
16 is not available if, within the previous six years, the person
17 has been convicted of OMVUI or has had a license revoked under
18 OMVUI or the implied consent chapter.

19 The bill is effective upon publication.

20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

HOUSE FILE 2369

H-5218

- 1 Amend House File 2369 as follows:
- 2 1. By striking page 13, line 18 through page 14,
- 3 line 32.

H-5218 FILED FEBRUARY 23, 1982 BY POFFENBERGER of Dallas
4/15 3/2 (p. 533)

HOUSE FILE 2369

H-5219

- 1 Amend House File 2369 as follows:
- 2 1. Page 9, by striking lines 6 through 15.

H-5219 FILED FEBRUARY 23, 1982 BY RITSEMA of Sioux
*Last 2/1 (p. 572)
insert & remove add (p. 539)*

H-5223 HOUSE FILE 2369

- 1 Amend House File 2369 as follows:
- 2 1. Page 10, line 20, by inserting after the word
- 3 "OFFICER." the words "Before requesting a person to
- 4 take a chemical test, the peace officer shall advise
- 5 the person of the right to consult counsel and to
- 6 remain silent."

H-5223 FILED FEBRUARY 23, 1982 BY WELSH of Dubuque
2/15 3/2 (p. 582)

H-5225

HOUSE FILE 2369

- 1 Amend House File 2369 as follows:
- 2 1. Page 1, line 5, by inserting after the figure
- 3 "321.281" the words "by a person whose driver's license
- 4 has not been revoked under section 321.283 or chapter
- 5 321B for the occurrence from which the arrest arose".

H-5225 FILED FEBRUARY 23, 1982 BY JAY of Appanoose
Adopted as corrected 2/24 (p. 529)

H-5227

HOUSE FILE 2369

- 1 Amend House File 2369 as follows:
- 2 1. Page 1, by inserting before line 1 the
- 3 following:
- 4 "Section 1. Chapter 123, Code 1981, is amended
- 5 by adding the following new section:
- 6 NEW SECTION. PRELIMINARY SCREENING TESTS AVAILABLE.
- 7 Each commercial establishment holding a license or
- 8 permit under this chapter which allows the consumption
- 9 of an alcoholic beverage or beer on the premises shall
- 10 maintain a test machine and an adequate supply of
- 11 testing receptacles used for the preliminary screening
- 12 test under section 8 of this Act. The establishment
- 13 shall make the test available for use by its customers
- 14 and may impose a charge, not exceeding fifty cents,
- 15 for its use. The department shall assist licensees
- 16 and permittees in obtaining test machines and receptacles.

H-5227 FILED FEBRUARY 23, 1982 BY RAPP of Black Hawk
Build not germane 2/24 (p. 528)

H-5208

1 Amend House File 2369 as follows:

2 1. Page 2, by striking line 34 and inserting in
3 lieu thereof the words "for a period of two hundred
4 seventy".

H-5208 FILED FEBRUARY 22, 1982

BY JOHNSON of Linn

Lost 2/24 (p. 532)

HOUSE FILE 2369

H-5211

1 Amend House File 2369 as follows:

A adopted

2 1. Page 3, by striking lines 5 through 12 and
3 inserting in lieu thereof the words "order deferring
4 judgment."

B adopted

5 2. Page 5, by inserting after line 12 the
6 following:

7 "Sec. ____ Section 321.283, subsection 6, Code
8 1981, is amended by striking the subsection."

C lost

9 3. Page 7, by striking lines 6 through 15.

10 4. Page 10, by striking line 33 through page 11,
11 line 24.

D adopted

12 5. Page 12, line 29, by striking the word "whose".

(526)

13 6. Page 12, by striking lines 30 through 33 and
14 inserting in lieu thereof the following: "or has
15 been issued a temporary license pursuant to section
16 9 of this Act or section 321B.7, the ~~department~~
17 department shall grant".

18 7. Page 13, line 21, by striking the word and
19 figure "1. JURISDICTION."

20 8. Page 13, by striking line 28 through page 14,
21 line 32 and inserting in lieu thereof the words
22 "administrative hearing was held."

23 9. By renumbering the sections and correcting
24 internal references to conform with this amendment.

H-5211 FILED FEBRUARY 23, 1982

BY JOHNSON of Linn

A & B adopted 2/25 (p. 541)

HOUSE FILE 2369

C - Lost 2/25 (p. 542) later to reconsider (p. 560)

H-5216

B - Adopted & amended by 5261 3/2 (p. 588)

1 Amend House File 2369 as follows:

2 1. Page 2, by striking lines 28 through 30 and
3 inserting in lieu thereof the following:

4 "5. The court in pronouncing sentence shall provide
5 as to the period during which a new license to operate
6 a motor vehicle shall not be issued to the defendant.
7 Notwithstanding section 321.212, the period shall
8 be as follows:

9 a. Not less than two hundred seventy days for
10 conviction of a first offense under this section.

11 b. Not less than one year for conviction of a
12 second offense under this section.

13 c. Not less than two years for conviction of a
14 third or subsequent offense under this section.

15 The clerk of court shall immediately certify to the
16 department a true copy of the judgment sentencing
17 the defendant under this section. The department
18 may receive an application for and shall grant a new
19 license at the expiration of the period provided in
20 the judgment of the court notwithstanding sections
21 321.177 and 321.212."

H-5216 FILED FEBRUARY 23, 1982

BY JOHNSON of Linn

Lost 2/24 (p. 532)

HOUSE FILE 2369

II-5236

Amend House File 2369 as follows:

2 1. Page 2, line 12, by striking the words "In
3 lieu of, or prior" and inserting in lieu thereof the
4 word "Prior".

5 2. Page 5, by striking lines 6 through 12 and
6 inserting in lieu thereof the following: "drivers
7 or complete treatment or rehabilitation services and
8 the person's drivers license is not revoked or
9 suspended at the time of the order, the court shall
10 also order that the revocation of the person's drivers
11 license shall be for an indefinite period and until
12 the required course or treatment or rehabilitation
13 services is successfully completed and proof of
14 completion has been filed with the department and
15 the provisions of chapter 321A have been complied
16 with. If the person's drivers license is revoked
17 or suspended at the time of the order, that revocation
18 or suspension shall not end prior to the completion
19 and proof of completion of the required course or
20 treatment or rehabilitation services."

21 3. Page 6, line 20, by striking the words "previous
22 revocation under section" and inserting in lieu thereof
23 the words "revocation within the previous six years
24 under section 321.209, subsection 2, section".

25 4. Page 11, line 6, by striking the words
26 "revocation or" and inserting in lieu thereof the
27 word "revocation,".

28 5. Page 11, line 7, by inserting after the figure
29 "321.281" the words and figures "or the person has
30 a previous revocation under section 321.281, subsection
31 6, or chapter 321B".

32 6. Page 12, by striking lines 31 and 32 and
33 inserting in lieu thereof the words and figure "or
34 who has been issued a twenty-day license pursuant
35 to section 9 of this".

36 7. Page 14, by striking lines 8 through 21 and
37 inserting in lieu thereof the words "temporary
38 restricted permit shall be granted only if the
39 department's denial is unsupported by substantial
40 evidence."

41 8. Page 16, by striking lines 10 and 11, and inserting
42 in lieu thereof the following: "trial informations,
43 conduct arraignments, accept guilty pleas, sentence
44 those pleading guilty and make appropriate orders
45 authorized by section 321.283. They shall have
46 power".

H-5236 FILED FEBRUARY 23, 1982 BY RITSEMA of Sioux

Adopted as amended by 5239

2/24 (p. 531)

Lines 25 thru 31 + 36 thru 40 placed out of order 3/2 (p. 532)

HOUSE FILE 2369

H-5229

- 1 Amend House File 2369 as follows:
- 2 1. Page 12, line 10, by striking the word "with-
- 3 in" and inserting in lieu thereof the words "within
- 4 for a period of".
- 5 2. Page 12, line 11, by striking the words "from
- 6 the date of the alleged violation" and inserting in
- 7 lieu thereof the words "from the date of the alleged
- 8 violation".

H-5229 FILED FEBRUARY 23, 1982 BY RITSEMA of Sioux

Adopted 3/2 (p. 583)

HOUSE FILE 2369

H-5230

- 1 Amend House File 2369 as follows:
- 2 1. Page 10, by striking line 33 through page 11,
- 3 line 24.
- 4 2. Page 13, line 34, by striking the figure
- 5 "321B.7" and inserting in lieu thereof the words and
- 6 figure "9 of this Act".

H-5230 FILED FEBRUARY 23, 1982 BY HALVORSON of Clayton
Placed out of order 3/2 (p. 582) LAGESCHULTE of Bremer
PELTON of Clinton
HARBOR of Mills

HOUSE FILE 2369

H-5235

- 1 Amend House File 2369 as follows:
- 2 1. Page 1, by inserting after line 18 the
- 3 following:
- 4 "Sec. 3. Section 321.218, unnumbered paragraph
- 5 one, Code 1981, is amended to read as follows:
- 6 Any A person whose operator's or chauffeur's license
- 7 or driving privilege, has been denied, canceled,
- 8 suspended or revoked as provided in this chapter,
- 9 and who drives any motor vehicle upon the highways
- 10 of this state while such the license or privilege
- 11 is denied, canceled, suspended, or revoked, is guilty
- 12 of a simple serious misdemeanor. The sentence imposed
- 13 under this section shall not be suspended by the
- 14 court, notwithstanding ~~the provisions of~~ section 907.3
- 15 or any other ~~provision of~~ statute. The department,
- 16 upon receiving the record of the conviction of any
- 17 a person under this section upon a charge of driving
- 18 a motor vehicle while the license of such the person
- 19 was suspended or revoked, shall, except for licenses
- 20 suspended under section 321.513, extend the period
- 21 of suspension or revocation for an additional like
- 22 period, and the department shall not issue a new
- 23 license during such the additional period."
- 24 2. Page 4, line 9, by striking the words ",
- 25 notwithstanding section 321.218".
- 26 3. Page 15, line 27, by striking the words ",
- 27 notwithstanding section 321.218".

H-5235 FILED FEBRUARY 23, 1982 BY RITSEMA of Sioux

Adopted 3/24 (p. 586)

HOUSE FILE 2369

H-5265

1 Amend House File 2369 as follows:

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

4 "Section 1. It is the intent of the general
5 assembly in enacting sections 2 through 4 of this
6 Act to allow border cities and counties to adopt
7 ordinances to reduce the incidence of violations of
8 section 321.281.

9 Sec. 2. Section 123.3, subsection 33, Code 1981,
10 is amended to read as follows:

11 33. "Legal age" means the age at or over which
12 a person may legally consume alcoholic liquor or beer,
13 and means nineteen years of age or more for Iowa
14 residents.

15 Sec. 3. Section 123.39, unnumbered paragraph 2,
16 Code 1981, is amended to read as follows:

17 ~~Local authorities shall have the power to~~ A local
18 authority may suspend any retail beer permit or liquor
19 control license for a violation of any ordinance or
20 regulation adopted by such the local authority. Local
21 authorities are empowered to adopt ordinances or
22 regulations for the location of the premises of retail
23 beer and liquor control licensed establishments and
24 are empowered to adopt ordinances, not in conflict
25 with the provisions of this chapter and that do not
26 diminish the hours during which beer or alcoholic
27 beverages may be sold or consumed at retail, governing
28 any other activities or matters which may affect the
29 retail sale and consumption of beer and alcoholic
30 liquor and the health, welfare and morals of the
31 community involved. However, border cities and
32 counties may enact local ordinances diminishing the
33 hours of operation of retail beer and liquor control
34 licensed establishments as provided in section 123.49,
35 subsection 2, paragraph b, provided that a local
36 ordinance shall not require a closing time earlier
37 than twelve o'clock midnight for such establishments,
38 or an opening time later than twelve o'clock noon
39 for such establishments. Border cities and counties
40 may enact local ordinances prohibiting nonresidents
41 of Iowa from consuming alcoholic liquors or beer
42 within their jurisdictions unless they are of legal
43 age to do so in the state or jurisdiction of their
44 residence.

45 Sec. 4. Section 123.47, Code 1981, is amended
46 to read as follows:

47 123.47 PERSONS UNDER LEGAL AGE. ~~No~~ A person shall
48 not sell, give, or otherwise supply alcoholic liquor
49 or beer to any person knowing or having reasonable
50 cause to believe ~~him~~ the recipient to be under legal

Page 2
1 age, and ~~no person or~~ persons under legal age shall
2 individually or jointly have alcoholic liquor or beer
3 in ~~his or~~ their possession or control; except in the
4 case of liquor or beer given or dispensed to a person
5 under legal age within a private home and with the

6 knowledge and consent of the parent or guardian for
7 beverage or medicinal purposes or as administered
8 to him the person by either a physician or dentist
9 for medicinal purposes and except to the extent that
10 a person under legal age may handle alcoholic beverages
11 and beer during the regular course of his-~~or-her~~ the
12 person's employment by a liquor control licensee or
13 beer permittee under this chapter. In border cities
14 and counties which have enacted local ordinances
15 prohibiting nonresidents of Iowa from consuming
16 alcoholic liquors or beer within their jurisdiction
17 unless the nonresidents are of legal age to do so
18 in the state or jurisdiction of their residence, this
19 section applies to the nonresidents and to those who
20 sell, give, or otherwise supply alcoholic liquor or
21 beer to the nonresidents."

H-5265 FILED FEBRUARY 25, 1982 BY SCHROEDER of Pottawattamie
Revised per version 3/2 (p. 584)

H-5261 HOUSE FILE 2369

- 1 Amend amendment H-5211 to House File 2369 as follows:
- 2 1. Page 1, line 15, by striking the word "temporary"
- 3 and inserting in lieu thereof the words "twenty-day".

H-5261 FILED FEBRUARY 25, 1982 RITSEMA of Sioux
Adopted 3/2 (p. 582)

H-5258 HOUSE FILE 2369

- 1 Amend House File 2369 as follows:
- 2 1. Page 3, by inserting after line 32 the
- 3 following:
- 4 "9. When an offense under this section is charged,
- 5 the prosecuting attorney shall not engage in
- 6 discussions with the attorney for the defendant with
- 7 a view toward reaching an agreement for the entering
- 8 of a plea of guilty to a lesser or related offense."

H-5258 FILED FEBRUARY 25, 1982 BY TYRRELL of Iowa
Lost 3/2 (p. 587)

HOUSE FILE 2369

H-5253

- 1 Amend House File 2369 as follows:
- 2 1. Page 3, by inserting after line 32 the
- 3 following:
- 4 "9. To assist in meeting the expenses incurred
- 5 by a county in the prosecutions, trials and
- 6 incarcerations under this section, the general assembly
- 7 annually appropriates one million dollars of the funds
- 8 credited by section 123.53, subsection 7, to the
- 9 military service tax fund to the counties of this
- 10 state. The treasurer of state shall semiannually
- 11 distribute one-half million dollars to the counties
- 12 in the same proportion as the amount the cities of
- 13 each county receive bears to the total amount
- 14 distributed to all the cities under section 123.53,
- 15 subsection 3."

5285
H-5253 FILED FEBRUARY 25, 1982 BY WOODS of Polk
Revised per version 3/2 (p. 586) WELSH of Dubuque RENAUD of Polk
PAVICH of Pottawattamie

HOUSE FILE 2369

H-5239

- 1 Amend amendment H-5236 to House File 2369 as
- 2 follows:
- 3 1. Page 1, by inserting after line 46 the
- 4 following:
- 5 "9. Page 16, line 32, by striking the words "the
- 6 person's driving record"."

H-5239 FILED FEBRUARY 24, 1982 BY RITSEMA of Sioux
ADOPTED (p. 531)

HOUSE FILE 2369

H-5248

- 1 Amend amendment H-5225 as follows:
- 2 1. Page 1, line 5, by striking the word
- 3 "occurrence" and inserting in lieu thereof the
- 4 word "occurrence".

H-5248 FILED FEBRUARY 24, 1982 BY JAY of Appanoose
ADOPTED (p. 529)

HOUSE FILE 2369

H-5268

- 1 Amend amendment H-5253 to House File 2369 as
- 2 follows:
- 3 1. Page 1, by inserting after line 15 the
- 4 following:
- 5 "2. Page 16, by inserting after line 34 the
- 6 following:
- 7 "Sec. ____ Subsection 9 of section 321.281 shall
- 8 take effect July 1 following enactment."
- 9 3. By renumbering the sections to conform with
- 10 this amendment."

H-5268 FILED MARCH 1, 1982 BY WOODS of Polk
Adoptive 3/2 (p. 586)

HOUSE FILE 2369

H-5281

- 1 Amend House File 2369 as follows:
- 2 1. Title page, by striking line 1 and inserting in
- 3 lieu thereof the following: "An Act relating to
- 4 crimes resulting from the operation of motor vehicles
- 5 under certain circumstances, including while the
- 6 operator's drivers license is suspended and".

H-5281 FILED MARCH 2, 1982 BY RITSEMA of Sioux
ADOPTED BY UNANIMOUS CONSENT
(p. 589)

H-5276

- 1 Amend House File 2369 as follows:
- 2 1. Page 3, line 25, by striking the word "ten"
- 3 and inserting in lieu thereof the word "six".
- 4 2. Page 6, line 15, by striking the word "ten"
- 5 and inserting in lieu thereof the word "six".
- 6 3. Page 6, line 30, by striking the word "ten"
- 7 and inserting in lieu thereof the word "six".
- 8 4. Page 7, line 3, by striking the word "ten"
- 9 and inserting in lieu thereof the word "six".
- 10 5. Page 8, line 25, by striking the word "ten"
- 11 and inserting in lieu thereof the word "six".
- 12 6. Page 10, line 26, by striking the word "ten"
- 13 and inserting in lieu thereof the word "six".

H-5276 FILED

BY BRANSTAD of Winnebago

MARCH 1, 1982

SCHNEKLOTH of Scott

Adopted 3/2 (p 585)

HOUSE FILE 2369

H-5277

- 1 Amend House File 2369 as follows:
- 2 1. Page 1, by inserting before line 1 the following:
- 3 "Section 1. Section 321.191, unnumbered paragraph
- 4 2, Code 1981, is amended to read as follows:
- 5 There shall be a fee of twenty dollars for
- 6 reinstatement of a chauffeur's license or operator's
- 7 license which is, after notice and opportunity for
- 8 hearing, suspended or revoked pursuant to sections
- 9 321.209, and 321.210, except subsection 4 thereof,
- 10 and ~~321B-7~~ chapter 321B. Such twenty-dollar fee shall
- 11 be collected only if the person whose license was
- 12 suspended or revoked was served personally with notice
- 13 thereof. If the person whose license was suspended
- 14 or revoked was served notice thereof by restricted
- 15 certified mail, the reinstatement fee shall be ten
- 16 dollars."
- 17 2. By renumbering the sections to conform with
- 18 this amendment.

H-5277 FILED MARCH 1, 1982

BY RITSEMA of Sioux

Adopted 3/2 (p 585)

*Amend for 544-82
D. Pass 4/1 (p. 989)*

Judiciary
Kudart, Chair
Rush
Lura
Ramsey
Small

HOUSE FILE 2369

BY COMMITTEE ON JUDICIARY AND
LAW ENFORCEMENT

(As Amended and Passed by the House)

Passed House, Date 4-21-82 (p. 1657) Passed Senate, Date 4-16-82 (p. 1255)

Vote: Ayes 94 Nays 4 Vote: Ayes 45 Nays 0

Approved May 11, 1982

*Repassed House per C.C. Report
4-24-82 (p. 1809)*

*Repassed Senate per C.C. Report 4-24-82 (p. 1469)
49-0*

A BILL FOR

1 An Act relating to crimes resulting from the operation of motor
 2 vehicles under certain circumstances, including while the
 3 operator's drivers license is suspended and while under
 4 the influence of an alcoholic beverage or drug or with
 5 a certain amount of alcohol in the blood and the
 6 provisions for chemical testing, sentencing, penalties
 7 and license revocation relating to that offense and making
 8 it effective upon publication.

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

Conference Committee Appointed 4/23

11 *Senators Kudart (Chair), Lura, De Koster, Small, & Carr (p. 1397)*
 12 *Representatives Ritsema (Chair) Clerk (Carro Lark), Corey, Kelch, & Jay (p. 1701)*

House Amendments \longrightarrow

Language Deleted *

1 Section 1. Section 321.191, unnumbered paragraph 2, Code
2 1981, is amended to read as follows:

3 There shall be a fee of twenty dollars for reinstatement
4 of a chauffeur's license or operator's license which is, after
5 notice and opportunity for hearing, suspended or revoked
6 pursuant to sections 321.209, and 321.210, except subsection
7 4 thereof, and ~~321B-7~~ chapter 321B. Such twenty-dollar fee
8 shall be collected only if the person whose license was
9 suspended or revoked was served personally with notice thereof.

10 If the person whose license was suspended or revoked was
11 served notice thereof by restricted certified mail, the
12 reinstatement fee shall be ten dollars.

13 Sec. 2. Section 321.209, subsection 2, Code 1981, is
14 amended by striking the subsection and inserting in lieu
15 thereof the following:

16 2. Operating a motor vehicle in violation of section
17 321.281 by a person whose driver's license has not been revoked
18 under section 321.283 or chapter 321B for the occurrence from
19 which the arrest arose.

20 Sec. 3. Section 321.212, unnumbered paragraph 1, Code
21 1981, is amended to read as follows:

22 Except as provided in section 321.513 the department shall
23 not suspend a license for a period of more than one year,
24 except that a license suspended because of incompetency to
25 drive a motor vehicle shall be suspended until the department
26 receives satisfactory evidence that the former holder is
27 competent to operate a motor vehicle and a refusal to reinstate
28 shall constitute a denial of license within the provisions
29 of section 321.215; upon revoking a license the department
30 shall not grant an application for a new license until the
31 expiration of one year after the revocation, unless another
32 period is specified by law.

33 Sec. 4. Section 321.218, unnumbered paragraph one, Code
34 1981, is amended to read as follows:

35 Any A person whose operator's or chauffeur's license or

1 driving privilege, has been denied, canceled, suspended or
 2 revoked as provided in this chapter, and who drives any motor
 3 vehicle upon the highways of this state while ~~such~~ the license
 4 or privilege is denied, canceled, suspended, or revoked, is
 5 guilty of a ~~simple~~ serious misdemeanor. The sentence imposed
 6 under this section shall not be suspended by the court,
 7 notwithstanding ~~the provisions of~~ section 907.3 or any other
 8 provision of statute. The department, upon receiving the
 9 record of the conviction of any a person under this section
 10 upon a charge of driving a motor vehicle while the license
 11 of ~~such~~ the person was suspended or revoked, shall, except
 12 for licenses suspended under section 321.513, extend the
 13 period of suspension or revocation for an additional like
 14 period, and the department shall not issue a new license
 15 during ~~such~~ the additional period.

16 Sec. 5. Section 321.281, Code 1981, as amended by Acts
 17 of the Sixty-ninth General Assembly, 1981 Session, chapter
 18 103, section 6, is amended by striking the section and
 19 inserting in lieu thereof the following:

20 321.281 OPERATING WHILE INTOXICATED OR DRUGGED--COPY OF
 21 ⁵⁴⁴JUDGMENT TO DEPARTMENT--COMMITMENT OF DEFENDANT FOR TREATMENT.

22 1. A person shall not operate a motor vehicle upon the
 23 public highways of this state in either of the following
 24 conditions:

25 a. While under the influence of an alcoholic beverage,
 26 a narcotic, hypnotic, or other drug, or any combination of
 27 such substances.

28 b. While having thirteen hundredths or more of one percent
 29 by weight of alcohol in the blood.

30 2. A person convicted of a violation of this section,
 31 upon conviction or a plea of guilty, is guilty of:

32 ⁵⁴⁴a. A serious misdemeanor for the first offense and shall
 33 be imprisoned in the county jail for not less than forty-eight
 34 ⁵⁴⁷⁶consecutive hours, less time credited for hours served after
 35 arrest.

54481 b. An aggravated misdemeanor for a second offense committed
5476
571 2 within a six-year period and shall be imprisoned in the county
6000-3 jail not less than seven days.

4 c. A class "D" felony for a third offense and each
5 subsequent offense committed within a six-year period.

6 3. A person shall not be convicted and sentenced for
7 violations of both paragraphs a and b of subsection 1 if the
8 offenses were committed in the same occurrence.

4489 4. Prior to imposition of, the punishment for a second,
10 third, or subsequent offense in violation of this section,
11 the court upon hearing may commit the defendant for treatment
12 of alcoholism or drug addiction or dependency to any hospital
13 or institution in Iowa providing such treatment. The court
5561 14 may prescribe the length of time for the treatment or it may
15 request that the hospital to which the person is committed
16 immediately report to the court when the person has received
17 maximum benefit from the program of the hospital or institution
18 or has recovered from the person's addiction, dependency,
19 or tendency to chronically abuse alcohol or drugs. A person
20 committed under this section who does not possess sufficient
21 income or estate to make payment of the costs of the treatment
22 in whole or in part shall be considered a state patient and
23 the costs of treatment shall be paid as provided in section
24 125.44.

25 5. The clerk of court shall immediately certify to the
26 department a true copy of the judgment sentencing the defendant
27 under this section.

28 6. If the court defers judgment pursuant to section 907.3
29 for an offense under this section, the court shall order that
30 the defendant's license to operate a motor vehicle be revoked
31 for a period of not less than thirty days nor more than ninety
32 days, during which time no new license to operate a motor
33 vehicle shall be issued to the defendant. The court shall
34 immediately require the defendant to surrender to it all
35 operator's or chauffer's licenses held by the defendant which

1 the court shall forward to the department with a copy of the
2 order deferring judgment.

3 7. This section does not apply to a person operating a
4 motor vehicle while under the influence of a narcotic,
5 hypnotic, or other drug if such substances were prescribed
6 for the person and were taken under the prescription and in
7 accordance with the directions of a medical practitioner as
8 defined in section 155.3, subsection 11, if there is no
9 evidence of the consumption of alcohol and the medical
10 practitioner had not directed the person to refrain from
11 operating a motor vehicle.

12 8. Upon the trial of a prosecution in which it is alleged
13 that the defendant was operating a motor vehicle while under
14 the influence of an alcoholic beverage, evidence that there
15 was, at the time, ten hundredths or more of one percent by
16 weight of alcohol in the blood shall be admitted as presumptive
17 evidence that the defendant was under the influence of an
18 alcoholic beverage. In any prosecution under this section,
19 upon proof of a proper foundation for the analysis, the results
20 of analysis of a specimen of the defendant's blood, breath,
21 saliva, or urine shall be admitted as conclusive evidence
22 of the amount of alcohol in the defendant's blood.

23 Sec. 6. Section 321.282, Code 1981, is amended to read
24 as follows:

25 321.282 VIOLATIONS. If any A person whose license
26 or privilege to operate is revoked or denied because the
27 person has been convicted or has pleaded guilty to driving
28 or operating a motor vehicle upon the public highways of this
29 state while in an intoxicated condition a violation of section
30 321.281 or is revoked under subsection 6 of that section who
31 is found driving or operating any motor vehicle in violation
32 of the provisions of sections 321.174 and 321.209 the person
33 shall be upon a highway in this state is guilty of a simple
34 serious misdemeanor.

35 Sec. 7. Section 321.283, subsections 2, 3, and 4, Code

1 1981, are amended to read as follows:

5476-2 2. COURT ORDER. After ~~the~~ a conviction of ~~a person~~ for
5487 3 ~~operating a motor vehicle while under the influence of an~~
4 ~~alcoholic beverage~~ a violation of section 321.281, the court
5 in addition to its power to commit the defendant for treatment
6 of alcoholism under section 321.281, may in lieu of, or prior
7 to or after the imposition of punishment for a first offense
8 or prior to or after the imposition of punishment for any
9 subsequent offense, order the defendant, at ~~his~~ the defendant's
10 own expense, to enroll in, attend and successfully complete
5445-11 a course for drinking drivers. The court may also require
5521-12 the defendant to seek treatment or rehabilitation services
13 under section 125.33 at the defendant's expense and to furnish
14 evidence of successful completion. A copy of the order shall
15 be forwarded to the department.

16 3. REFERRED ON CONVICTION. After ~~any~~ a conviction for
17 ~~operating a motor vehicle while under the influence of an~~
18 ~~alcoholic beverage~~ under a violation of section 321.281, the
19 court may refer the defendant for treatment at a facility
20 as defined in sections 125.1 to 125.43 and designated by the
21 Iowa department of substance abuse. The court may prescribe
22 the length of time for treatment or it may be left to the
23 discretion of the facility to which the defendant was referred.
24 A person referred under this section who ~~is~~ does not ~~possessed~~
25 ~~of~~ possess sufficient income or estate to enable ~~him or her~~
26 the person to make payment of the costs of such treatment
27 in whole or in part is a state patient, and costs for treatment
28 shall be paid as provided in section 125.44.

29 4. LICENSE REVOKED. When the court orders a person to
30 enroll, attend and successfully complete a course for drinking
5521-31 drivers or complete treatment or rehabilitation services and
32 the person's drivers license is not revoked or suspended at
33 the time of the order, the court shall also order that the
34 revocation of the person's drivers license shall be for an
35 indefinite period and until the required course or treatment

1 or rehabilitation services is successfully completed and proof
 2 of completion has been filed with the department and the
 3 provisions of chapter 321A have been complied with. If the
 4 person's drivers license is revoked or suspended at the time
 5 of the order, that revocation or suspension shall not end
 6 prior to the completion and proof of completion of the required
 7 course or treatment or rehabilitation services.

537
5448 8 Sec. 8. Section 321.283, subsection 6, Code 1981, is
 9 amended by striking the subsection.

10 Sec. 9. Section 321.283, subsection 7, unnumbered paragraph
 11 2, Code 1981, is amended to read as follows:

12 Enrollment in the courses shall not be limited to persons
 13 ordered to enroll, attend and successfully complete the course
 14 under ~~the provisions of~~ subsection 2, and any person convicted
 15 of ~~operating a motor vehicle while under the influence of~~
 16 ~~an alcoholic beverage~~ a violation of section 321.281 who was
 17 not ordered to enroll, ~~shall be allowed to~~ in a course may
 18 enroll in and attend a course for drinking drivers.

19 Sec. 10. Section 321.555, subsection 1, paragraph b, Code
 20 1981, is amended to read as follows:

21 b. ~~Driving~~ Operating a motor vehicle ~~while under the~~
 22 ~~influence of an alcoholic beverage or a controlled substance~~
 23 ~~as defined in section 204.101~~ in violation of section 321.281.

5476 24 Sec. 11. Chapter 321B, Code 1981, is amended by adding
 25 the following new section:

5476-26 NEW SECTION. PRELIMINARY SCREENING TEST. When a peace
 27 officer has reasonable grounds to believe from the manner
 28 in which a person is operating a motor vehicle, or has operated
 29 a motor vehicle, that the operator may be violating or has
 30 violated section 321.281, or the operator has been involved
 31 in a motor vehicle collision resulting in injury or death,
 32 the peace officer may request the operator to provide a sample
 33 of the operator's breath for a preliminary screening test
 34 using a device approved by the commissioner of public safety
 35 for that purpose. The results of this preliminary screening

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

6 Sec. 12. Chapter 321B, Code 1981, is amended by adding
7 the following new section:

8 NEW SECTION. TEST RESULT REVOCATION. Upon certification
9 by the peace officer that there existed reasonable grounds
10 to believe the person to have been operating a motor vehicle
11 in violation of section 321.281 and that the person submitted
12 to chemical testing and the test results indicate ten
13 hundredths or more of one percent by weight of alcohol in
14 the person's blood, the department shall revoke the person's
15 license or permit to drive or nonresident operating privilege
16 for a period of one hundred twenty days if the person has
17 no revocation within the previous six years under section
18 321.209, subsection 2, section 321.281 or chapter 321B, two
19 hundred forty days if the person has one previous revocation
20 under those provisions, and one year if the person has two
547>21 or more revocations under those provisions.

22 The effective date of the revocation shall be twenty days
23 after the department has mailed notice of revocation to the
547-24 person by registered or certified mail or, on behalf of the
25 department, a peace officer offering a chemical test or
26 directing the administration of a chemical test may serve
27 immediate notice of intention to revoke and of revocation
28 on a person when the person's test results indicate ten
29 hundredths or more of one percent by weight of alcohol in
30 the blood.

31 If the peace officer serves that immediate notice, the
32 peace officer shall take the Iowa license or permit of the
33 driver, if any, and issue a temporary license valid only for
34 twenty days. The peace officer shall immediately send the
35 person's driver's license to the department along with an

1 affidavit stating that the test results indicate ten hundredths
 2 of one percent or more by weight of alcohol in the person's
 3 blood.

5474 4 The department may, on application, issue a temporary
 5 restricted license to a person whose license has been revoked
 6 under this section when the person's regular employment
 7 includes the operation of a motor vehicle or who cannot perform
 8 his or her regular occupation without the use of a motor
 9 vehicle, but the person shall not operate a vehicle for
 10 pleasure while holding a restricted license. However, this
 11 paragraph does not apply to a person whose license is suspended
 12 or revoked for another reason. Chapter 321A does not apply
 13 to revocation under this section.

14 Sec. 13. Section 321B.1, Code 1981, is amended to read
 15 as follows:

16 321B.1 DECLARATION OF POLICY. The general assembly hereby
 17 ~~determines-and declares that the-provisions-of~~ this chapter
 18 are is necessary in-order-to-control-alcoholic-beverages-and
 19 to aid the enforcement of laws prohibiting operation of a
 20 motor vehicle while under the influence of an alcoholic
 21 beverage, a narcotic, hypnotic, or other drug or any
 22 combination of such substances, or while having a certain
 23 amount of alcohol in the blood.

5448 24 Sec. 14. Section 321B.2, Code 1981, is amended by adding
 25 the following new unnumbered paragraph:

26 NEW UNNUMBERED PARAGRAPH. As used in this chapter "arrest"
 27 also includes a taking into custody pursuant to section 232.19.

28 Sec. 15. Section 321B.3, Code 1981, is amended to read
 29 as follows:

30 321B.3 IMPLIED CONSENT TO TEST. Any person who operates
 31 a motor vehicle in this state upon a public highway, under
 32 ~~such~~ circumstances as-to which give reasonable grounds to
 33 believe the person to have been operating a motor vehicle
 34 ~~while-under-the-influence-of-an-alcoholic-beverage~~ in violation
 35 of section 321.281, shall-be is deemed to have given consent

1 to the withdrawal ~~from-his-body~~ of specimens of ~~his~~ the
2 person's blood, breath, saliva, or urine, and to a chemical
3 test or tests ~~thereof~~, of the specimens for the purpose of
4 determining the alcoholic content of ~~his~~ the blood, subject
5 to ~~the-provisions-hereinafter-set-out~~ this section. The
6 withdrawal of ~~such~~ the body substances, and the test or tests
7 ~~thereof~~, shall be administered at the written request of a
8 peace officer having reasonable grounds to believe the person
9 to have been operating a motor vehicle ~~upon-a-public-highway~~
10 ~~of-this-state-while-under-the-influence-of-an-alcoholic~~
11 beverage in violation of section 321.281, and only-after-the
12 peace-officer-has-placed-such-person-under-arrest-for-the
13 offense-of-operating-a-motor-vehicle-while-under-the-influence
14 of-an-alcoholic-beverage if any of the following conditions
15 exist:

16 1. A peace officer has lawfully placed the person under
17 arrest for violation of section 321.281.

18 2. The person has been involved in a motor vehicle accident
19 or collision resulting in personal injury or death.

20 3. The person has refused to take a preliminary breath
21 screening test provided by this chapter.

22 4. The preliminary breath screening test was administered
23 and it recorded ten hundredths or more of one percent by
24 weight of alcohol in the blood.

25 PARAGRAPH DIVIDED. The peace officer shall determine which
26 of the four substances, breath, blood, saliva, or urine, shall
27 be tested. Refusal to submit to a chemical test of urine,
28 saliva or breath ~~shall-be~~ is deemed a refusal to submit, and
29 ~~the-provisions-of~~ section 321B.7 ~~shall-apply~~ applies. A
30 refusal to submit to a chemical test of blood ~~shall~~ is not
31 ~~be~~ deemed a refusal to submit, but in that case, the peace
32 officer shall then determine which one of the other three
33 substances shall be tested, and shall offer ~~such~~ the test.
34 If ~~such~~ the peace officer fails to provide a test within two
35 hours after ~~such~~ the preliminary screening test is administered

1 or refused or the arrest is made, whichever occurs first,
2 no a test shall-be is not required, and there shall be no
3 revocation under ~~the-provisions-of~~ section 321B.7.

54 If there has been an accident in which a person has been
5 killed or in which a person has been injured and there is
6 a reasonable likelihood that the person may die as a result
7 of the injuries sustained in the accident, and there exists
8 reasonable grounds for believing that another person involved
9 in the accident has violated section 707.5 or section 321.281,
10 a test may be administered without the consent of the person
11 suspected of violating section 707.5 or section 321.281.
12 If the person submits voluntarily to the test there shall
13 be no revocation for refusal to consent under section 321B.7.

14 Sec. 16. Section 321B.4, Code 1981, is amended to read
15 as follows:

16 321B.4 TAKING SAMPLE FOR TEST. Only a licensed physician,
17 ~~or-a~~ physician's assistant as defined in section 148C.1,
18 subsection 6, medical technologist or registered nurse
19 ~~designated-by-a-licensed-physieian-as-his-representative,~~
20 acting at the ~~written~~ request of a peace officer may withdraw
21 ~~such~~ body substances for the purpose of determining the
22 alcoholic or drug content of the person's blood. However,
23 any peace officer, using devices and methods approved by the
24 commissioner of public safety, may take a specimen of a
25 person's breath or urine for the purpose of determining the
26 alcoholic or drug content of the person's blood. Only new,
27 originally factory wrapped, disposable syringes and needles,
28 kept under strictly sanitary and sterile conditions shall
29 be used for drawing blood. ~~Such~~ The person may have an
30 independent chemical test or tests administered in addition
31 to any administered at the direction of a peace officer.
32 The failure or inability of the person to obtain an independent
33 chemical test or tests ~~shall~~ does not preclude the admission
34 in evidence of the results of the test or tests taken at the
35 direction of the peace officer. Upon the request of the

1 person who is tested, the results of the test or tests taken
2 at the direction of the peace officer shall be made available
3 to ~~him~~ the person.

4 Sec. 17. Section 321B.5, Code 1981, is amended to read
5 as follows:

6 321B.5 DEAD OR UNCONSCIOUS PERSONS. Any person who is
7 dead, unconscious or who is otherwise in a condition rendering
8 ~~him~~ the person incapable of consent or refusal ~~shall-be~~ is
9 deemed not to have withdrawn the consent provided by section
10 321B.3, and the test may be given; provided that a licensed
11 physician shall certify in advance of such test that such
12 person is dead, unconscious or otherwise in a condition
13 rendering ~~him~~ that person incapable of consent or refusal.
14 ~~In-such-case-such-condition-shall-obviate-the-requirements~~
15 ~~of-arrest-and-advice-pursuant-to-section-321B-6-~~

16 Sec. 18. Section 321B.6, Code 1981, is amended to read
17 as follows:

18 321B.6 STATEMENT OF OFFICER. A peace officer shall advise
19 any person who is requested to take any chemical test that
20 a refusal to submit to such test will result in revocation
21 of the person's license or privilege to operate a motor
22 vehicle; ~~provided; however; that this requirement shall.~~
23 A peace officer shall advise a person prior to the submission
24 to a chemical test that if the results indicate ten hundredths
25 or more of one percent by weight of alcohol in the blood the
26 department will revoke the person's license or privilege to
27 operate a motor vehicle. The peace officer shall advise the
28 person of the periods of revocation applying for both reasons
29 for revocation. The requirements of this section do not apply
30 in the case of any person referred to in section 321B.5.

*31 Sec. 19. Section 321B.7, Code 1981, is amended to read
32 as follows:

5468 33 321B.7 REFUSAL TO SUBMIT. If a person ~~under-arrest~~ refuses
5476 34 to submit to the chemical testing, ~~no~~ a test shall not be
35 given, but the ~~director~~ department, upon the receipt of a

1 sworn report of the peace officer that ~~he-or-she~~ the officer
2 had reasonable grounds to believe the arrested person to have
3 been operating a motor vehicle ~~upon-a-public-highway-of-this~~
4 ~~state-while-under-the-influence-of-an-alcoholic-beverage,~~
5 ~~that-he-or-she-had-placed-such-person-under-arrest-for-the~~
6 ~~offense-of-operating-a-motor-vehicle-while-under-the-influence~~
7 ~~of-an-alcoholic-beverage~~ in violation of section 321.281,
8 the conditions existing which gave implied consent for chemical
9 testing pursuant to section 321B.3, and that the person had
10 refused to submit to the chemical testing, shall revoke his
11 ~~er-her~~ the person's license or permit to drive and any
12 nonresident operating privilege for a period of ~~not-less-than~~
13 ~~one-hundred-twenty-days-not-more-than~~ one year; or if the
14 person is a resident without a license or permit to operate
15 a motor vehicle in this state, the ~~director~~ department shall
16 deny to the person the issuance of a license or permit within
17 for a period of one year ~~from-the-date-of-the-alleged~~
18 violation, subject to review as hereinafter provided in this
19 chapter. The effective date of ~~any-such~~ revocation shall
20 be twenty days after the ~~director~~ department has mailed notice
21 of ~~such~~ revocation to ~~such~~ the person by registered or
22 certified mail or, on behalf of the department, a peace officer
23 offering or directing the administration of a chemical test
24 may serve immediate notice of intention to revoke and of
25 revocation on a person who refuses to permit chemical testing.
26 If the peace officer serves that immediate notice, the peace
27 officer shall take the Iowa license or permit of the driver,
28 if any, and issue a temporary license effective for only
29 twenty days. The peace officer shall immediately send the
30 person's license to the department along with an affidavit
31 indicating the person's refusal to submit to chemical testing.

32 Sec. 20. Section 321B.8, Code 1981, is amended to read
33 as follows:

5476 34 321B.8 HEARING. Upon the written request of a person
35 whose privilege to drive has been revoked or denied, or has

1 been issued a twenty-day license pursuant to section 12 of
2 this Act or section 321B.7, the ~~director~~ department shall
3 grant the person an opportunity to be heard within twenty
4 days after the receipt of the request, but the request must
5 be made within ~~thirty~~ ten days of the effective date of
6 revocation or denial of driving privileges or the issuance
7 of a temporary permit. The hearing shall be before the
8 ~~director, department~~ in the county wherein where the alleged
9 events occurred ~~for-which-the-person-was-arrested~~, unless
10 the director and the person agree that the hearing may be
11 held in some other county. The hearing may be recorded and
12 its scope shall cover the issues of whether a peace officer
13 had reasonable grounds to believe the person to have been
14 operating a motor vehicle ~~upon-a-public-highway-of-this-state~~
15 ~~while-under-the-influence-of-an-alcoholic-beverage, whether~~
16 ~~the-person-was-placed-under-arrest-and~~ in violation of section
17 321.281, whether ~~he~~ the person refused to submit to the test
18 or tests, the test results if a person consented to a test
19 and whether the person should be issued a temporary restricted
20 license. The ~~director~~ department shall order that the
21 revocation or denial be either rescinded or sustained.

22 Sec. 21. Section 321B.9, Code 1981, is amended to read
23 as follows:

5476-24 321B.9 JUDICIAL REVIEW--TEMPORARY RESTRICTED PERMIT ISSUED.

*25 Judicial review of ~~the-actions~~ an action of the ~~director~~
26 department may be sought in accordance with the terms of the
27 Iowa administrative procedure Act. Notwithstanding the terms
28 of said Act, ~~petitions~~ a petition for judicial review may
29 be filed in the district court in the county wherein the
30 alleged events occurred for which the licensee was arrested
31 or in the county in which the administrative hearing was held.

32 Sec. 22. Section 321B.10, Code 1981, is amended to read
33 as follows:

34 321B.10 EVIDENCE IN ANY ACTION. Upon the trial of any
35 civil or criminal action or proceeding arising out of acts

1 alleged to have been committed by any person while operating
2 a motor vehicle ~~upon-a-public-highway-of-this-state-while~~
3 ~~under-the-influence-of-an-alcoholic-beverage in violation~~
4 of section 321.281, evidence of the amount of alcohol or drugs
5 in the person's blood at the time of the act alleged as shown
6 by a chemical analysis of ~~his~~ the person's blood, breath,
7 saliva or urine is admissible.

8 Sec. 23. Section 321B.11, Code 1981, is amended to read
9 as follows:

10 321B.11 PROOF OF REFUSAL ADMISSIBLE. If the person under
11 ~~arrest~~ refuses to submit to the test or tests, proof of refusal
12 ~~shall-be~~ is admissible in any civil or criminal action or
13 proceeding arising out of acts alleged to have been committed
14 while the person was operating a motor vehicle ~~upon-a-public~~
15 ~~highway-of-this-state-while-under-the-influence-of-an-alcoholic~~
16 ~~beverage in violation of section 321.281.~~

17 Sec. 24. Section 321B.15, Code 1981, is amended to read
18 as follows:

19 321B.15 DRIVING WHILE LICENSE DENIED OR REVOKED. Any
20 person whose license, or driving privilege, has been denied
21 or revoked as provided in this chapter, and who drives any
22 motor vehicle upon the highways of this state while ~~such the~~
23 license or privilege is denied or revoked, is guilty of a
24 ~~simple~~ serious misdemeanor ~~and-upon-conviction-shall-be~~
25 ~~punished-as-provided-for-simple-misdemeanors-in-section~~

* 26 ~~321.482.~~ The department, upon receiving the record of the
27 conviction of any person under this section upon a charge
28 of driving a motor vehicle while the license of ~~such the~~
29 person was revoked or denied, shall extend the period of
30 ~~revocation~~ for an additional like period, and the department
31 shall not issue a new license during ~~such the~~ additional
32 period.

52907
54-5
5452

33 Sec. 25. Section 602.60, unnumbered paragraph 1, Code
34 1981, is amended to read as follows:

35 Judicial magistrates ~~shall~~ have jurisdiction of simple

1 misdemeanors, including traffic and ordinance violations,
2 preliminary hearings, search warrant proceedings, and small
3 claims. They ~~shall~~ also have jurisdiction to exercise the
4 powers specified in sections 644.2 and 644.12 and the power
5 to hear complaints, or preliminary informations, issue
6 warrants, order arrests, make commitments and take bail.
7 They also have jurisdiction of first offense violations of
8 section 321.281 but only to the extent that they may approve
9 trial informations, conduct arraignments, accept guilty pleas,
10 sentence those pleading guilty and make appropriate orders
11 authorized by section 321.283. They ~~shall have power to~~ may
12 act any place within the judicial district as directed, and
13 venue shall be the same as in other district court proceedings.

544814 Sec. 26. Section 602.62, Code 1981, is amended to read
15 as follows:

16 602.62 PROCEDURE. The criminal procedure before judicial
17 magistrates shall be as provided in chapters 804, 806, 808,
18 811, 820 and 821 and in R.Cr.P. 2, 5, 7, 8 and 32 to 46.
19 The civil procedure before judicial magistrates shall be as
20 provided in chapters 631 and 648.

544921 Sec. 27. Section 907.3, unnumbered paragraph 1, Code 0981,
22 is amended to read as follows:

23 Pursuant to section 901.5, the trial court may, upon a
24 plea of guilty, a verdict of guilty, or a special verdict
25 upon which a judgment of conviction may be rendered, exercise
26 any of the options contained in subsections 1 and 2 of this
27 section. However, this section shall not apply to a forcible
28 felony. This section also does not apply to a violation of
29 section 321.281 if, within the previous six years, either
30 the person has been convicted of that section or the person's
*31 driving record indicates a previous driver's license revocation
32 pursuant to that section or chapter 321B.

544933 Sec. 28. This Act, being deemed of immediate importance,
544934 takes effect from and after its publication in The Belmond
544935 Independent, a newspaper published in Belmond, Iowa, and in

1 the Le Mars Daily Sentinel, a newspaper published in Le Mars,
2 Iowa.

- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35

HOUSE FILE 2369
FISCAL NOTE for S-5448

REQUESTED BY SENATOR CARR

In compliance with a written request there is hereby submitted a Fiscal Note for Amendemnt S-5448 to House File 2369 pursuant to Joint Rule 16.

Amendment S-5448 to H.F. 2369 makes a number of changes to the bill that have a fiscal impact.

State Correctional Institutions - The amendment will not change the impact on prison populations and the effect is still expected to be minimal.

County Jails - The amendment does not allow the court to suspend the sentence for persons convicted for second or subsequent OMVUI violations. This may increase the numbers of persons spending time in county jails, but it is believed that the jails will be able to handle this increase with minimal costs for additional food.

Court Costs - The amendment strikes language in Section 25 that gives judicial magistrates jurisdiction over first offense OMVUI violations. This would continue the current system and the additional costs for court reporters would no longer be necessary.

Department of Transportation - The amendment does not change the processing costs in the Office of Drivers Licenses and the department believes they can absorb any additional cost without a supplemental appropriation.

SOURCES: DSS, OPP, COURT ADMIN, ISAC, DOT

RECEIVED BY THE SECRETARY OF THE SENATE, APRIL 13, 1982

FILED:
APRIL 15, 1982

BY GERRY D. RANKIN, FISCAL DIRECTOR

SENATE 2
APRIL 16, 1982

HOUSE FILE 2369
FISCAL NOTE

REQUESTED BY SENATOR CARR

In compliance with a written request there is hereby submitted a Fiscal Note for House File 2369 as amended, pursuant to Joint Rule 16.

H.F. 2369, as passed by the House, is an Act relating to crimes resulting from the operation of motor vehicles under certain circumstances, including while the operator's drivers license is suspended and while under the influence of an alcoholic beverage or drug or with a certain amount of alcohol in the blood and the provisions for chemical testing, sentencing, penalties and license revocation relating to that offense and making it effective upon publication.

Fiscal Impact:

State Correctional Institutions. H.F. 2369 appears to have little or no impact on sentences for third-offense OMVUI other than limiting the amount of time allowed to accumulate three offenses. As a result there would appear to be little impact on prison populations.

County Jails. The impact on county jails will be evidenced for those convicted of second or subsequent offenses. These offenders are required to spend seven days in jail, however, the bill still allows the sentences to be deferred or suspended. It is believed that there is adequate space in county jails to handle OMVUI offenders. The primary increased cost would relate to an increase in food expenses, but the counties were not able to make a fiscal estimate at this time.

Court Costs. Section 25 of H.F. 2369 gives judicial magistrates jurisdiction over first offense OMVUI violations. Currently, magistrates are not authorized by the Code to hire shorthand reporters. If a magistrate's jurisdiction is expanded to this area it is believed that they will need to have an accurate record for review on appeal. The increased cost is expected to be approximately \$600,000 annually.

Department of Transportation. It is expected that H.F. 2369 will increase the processing costs in the Office of Drivers Licenses. Precise costs are identifiable, but DOT believes that their current FY 1983 appropriation should be able to absorb any additional costs.

SOURCES: DSS, OPP, COURT ADMIN, ISAC, DOT
Received by the Secretary of the Senate, April 13, 1982

FILED:
APRIL 15, 1982

BY GERRY RANKIN, FISCAL DIRECTOR

HOUSE FILE 2369

S-5290

1 Amend House File 2369 as amended, passed and
2 reprinted by the House, as follows:
3 1. Page 1, by adding before line 1 the following:
4 "Section 101. NEW SECTION. COVERAGE FOR TREATMENT
5 OF CHEMICAL DEPENDENCY.
6 1. Insurers who issue group hospital and medical
7 expense incurred insurance policies and nonprofit
8 hospital and medical service plan corporations which
9 issue hospital and medical service plan contracts
10 shall make available coverage for treatment of chemical
11 dependency or substance abuse. Treatment shall be
12 provided at treatment facilities enumerated in
13 paragraph b provided that, in the case of nonprofit
14 hospital and medical service plan corporation
15 contracts, the facility has contracted with the service
16 plan corporation under terms and conditions which
17 the service plan corporation finds satisfactory for
18 its membership. Coverage for the treatment of
19 dependency and abuse may be subject to the following
20 conditions:
21 a. A physician and surgeon or an osteopathic
22 physician or surgeon shall diagnose the dependency
23 or abuse or recommend the treatment.
24 b. Any of the following shall provide the
25 treatment:
26 (1) A facility as defined in section 125.2,
27 subsection 2.
28 (2) A residential program accredited by the joint
29 commission on accreditation for hospitals.
30 (3) A nonresidential outpatient program accredited
31 by the joint commission on accreditation for hospitals.
32 2. The policy or contract providing coverage for
33 the treatment shall contain provisions for maximum
34 benefits and coinsurance, and reasonable limitations,
35 deductibles, and exclusions.
36 3. A violation of this Act is unfair discrimination
37 under section 126 of this Act.
38 4. As used in this section, "chemical dependency"
39 means as defined in section 125.2, subsection 1.
40 "Substance abuse" means use of a chemical substance
41 as defined in section 125.2, subsection 3, to the
42 extent that the user's health is substantially impaired
43 or endangered or that the user's social or economic
44 function is substantially disrupted."
45 2. Page 14, by adding after line 32 the following:
46 "Sec. 126. Section 507B.4, subsection 7, Code
47 1981, is amended by adding the following new paragraph:
48 NEW PARAGRAPH. Failing to make available coverage
49 for treatment of chemical dependency or substance
50 abuse as required under section 101 of this Act."

1 3. Page 15, by adding after line 32 the following:
2 "Sec. 130. NEW SECTION. Sections 101 and 126
3 of this Act apply to policies and contracts delivered
4 or issued for delivery in this state after the
5 effective date of this Act, and to existing group
6 policies or contracts on their next anniversary or
7 renewal date or the expiration of the applicable
8 collective bargaining contract, if any, whichever
9 is the later. This Act does not apply to blanket,
10 short-term travel, accident only, limited or specified
11 disease, or individual conversion policies or
12 contracts, nor to policies or contracts designed for
13 issuance to persons eligible for Medicare coverage
14 under Title XVIII of the Social Security Act.
15 Sec. 131. Sections 101 and 126 of this Act take
16 effect January 1 following its enactment."
17 4. Title page, line 7, by inserting after the
18 word "offense" the words "and relating to insurance
19 coverage for chemical dependency and substance abuse".
20 5. Renumber as necessary.

S-5290 FILED
MARCH 17, 1982

Included not germane 4/6 (p. 1061)

BY SUE YENGER
EDGAR H. HOLDEN
TOM SLATER

S-5448

1 Amend House File 2369 as amended, passed and
2 reprinted by the House, as follows:

A 3 1. Page 2, line 34, by striking the word
4 "consecutive"

B 5 2. Page 2, line 35, by inserting after the word
6 "arrest." the words "The court, where possible, shall
7 accommodate the sentence to the work schedule of the
8 defendant."

L 9 3. Page 3, line 3, by inserting after the word
10 "days" the words ", which minimum term cannot be
11 suspended notwithstanding section 901.5, subsection
12 3 and section 907.3, subsection 2".

C 13 4. Page 3, by striking lines 9 through 13 and
14 inserting in lieu thereof the following:
15 "4. As a condition of a suspended sentence or
16 portion of sentence for a second, third or subsequent
17 offense in violation of this section, the court upon
18 hearing may commit the defendant for inpatient
19 treatment of alcoholism or drug addiction or dependency
20 to any hospital or institution in Iowa providing such
21 treatment. The time for which the defendant is
22 committed for treatment shall be credited against
23 the defendant's sentence. The court".

J 24 5. Page 4, line 2, by inserting after the word
25 "judgment." the words and figure "A person whose
26 license to operate a motor vehicle is revoked pursuant
27 to this subsection may be issued a temporary restricted
28 driving permit by the department allowing the person
29 to drive to and from the person's home and place of
30 employment and in the person's employment, if the
31 person's license to operate a motor vehicle is not
32 subject to revocation under section 321B.7 for refusal
33 to submit to chemical testing."

5475 E 34 6. Page 4, by striking lines 18 through 22 and
35 inserting in lieu thereof the words "alcoholic
36 beverage."

3 37 7. Page 5, line 11, by striking the word "also"
38 and inserting in lieu thereof the words "alternatively
39 or additionally".

3 40 8. Page 6, by striking lines 8 and 9 and inserting
41 in lieu thereof the following:

42 "Sec. 8. Section 321.283, subsection 6, Code 1981,
43 is amended to read as follows:

44 6. Temporary permit. Any person required to
45 attend a course by the provisions of this division,
46 who is subject to a drivers license suspension or
47 revocation, may be issued a temporary driving permit
48 by the department restricted to driving to and from
49 his the person's home, place of employment, in his
50 the person's employment and the location of the

1 required course. Any person who does not receive
2 a temporary driving permit may after the period of
3 license suspension or revocation under for a violation
4 of section 321.281 have his or her drivers license
5 reissued subject to suspension for failure to comply
6 with the provisions of this division. This section
7 shall not permit the issuance of a temporary driving
8 permit or reissuance of a drivers license where the
9 provisions of chapter 321A have not been complied
10 with.

11 Successful completion of a course required by this
12 division shall not reverse a drivers license suspension
13 or revocation or reduce the length of a suspension
14 or revocation under for a violation of section 321.281,
15 however, the director may reduce the length of a
16 suspension or revocation contingent upon successful
17 completion of a course for drinking drivers or under
18 chapter 321B."

19 9. Page 8, by striking lines 24 through 27.

J 5486 20 10. Page 10, by striking lines 4 through 13.

J 5495
J 5498 21 11. Page 12, lines 12 and 13, by striking the
22 words "~~not less than one hundred twenty days nor more~~
23 ~~than~~" and inserting in lieu thereof the words "not
24 less than one hundred twenty eighty days nor more
25 than".

K 26 12. Page 14, by striking line 33 through page
27 15, line 20.

28 13. Page 15, by striking lines 21 through 32 and
29 inserting in lieu thereof the following:

L 30 "Sec. 27. Section 907.3, subsection 1, unnumbered
31 paragraph 2, Code 1981, is amended by adding the
32 following new lettered subparagraph:

33 NEW LETTERED SUBPARAGRAPH. The offense is a
34 violation of section 321.281 and, within the previous
35 six years, the person has been convicted of a violation
36 of that section or the person's driver's license has
37 been revoked pursuant to that section."

M 5480 38 14. Page 15, by striking line 33 through page
39 6, line 2.

40 15. By renumbering the sections to conform with
41 this amendment.

S-5448 FILED BY COMMITTEE ON JUDICIARY
APRIL 1, 1982 LUCAS J. DeKOSTER, CHAIR

- A- Adopted 4/6 (p. 1057)
- C- Amended by 5489 & adopted (p. 1058)
- B- Adopted (p. 1058)
- E- Adopted as amended by 5475 (p. 1058)
- F, G- Adopted (p. 1058)
- H- Adopted (p. 1059)
- K- Adopted (p. 1060)
- L- Adopted as amended by 5484 (p. 1060)
- M- Adopted as amended by 5474 (p. 1061)
- N- Adopted as amended by 5498 (p. 1062)

J- Last 4/6 (p. 1059)
Motion to reconsider provided 4/13 (p. 1164)
Adopted 4/13 (p. 1166)

HOUSE FILE 2369

S-5467

1 Amend the Judiciary Committee amendment, S-5448, to
2 House File 2369 as amended, passed and reprinted by
3 the House as follows:

4 1. Page 1, by striking line 23 and inserting in
5 lieu thereof the following: "that portion of the
6 defendant's sentence which exceeds the seven-day
7 minimum sentence. The court".

S-5467 FILED

APRIL 6, 1982

Law 4/6 (p. 1057)

BY MICK LURA

GARY BAUGHER

HOUSE FILE 2369

S-5470

1 Amend House File 2369 as amended, passed and
2 reprinted by the House, as follows;

3 1. Page 4, by inserting after line 22 the
4 following:

5 "9. If the defendant is convicted of violating
6 this section and the offense was committed in a motor
7 vehicle owned by the defendant, that motor vehicle
8 is subject to forfeiture under the provisions of
9 chapter 809."

S-5470 FILED

APRIL 6, 1982

Law 4/6 (p. 1063)

BY JOE BROWN

HOUSE FILE 2369

S-5473

1 Amend House File 2369, as amended, passed and
2 reprinted by the House, as follows:

3 1. Page 7, line 21, by inserting after the word
4 "provisions" the words "arising from separate
5 occurrences".

S-5473 FILED

APRIL 6, 1982

Adopted 4/13 (p. 1163)

BY BOB RUSH

SENATE 4
APRIL 7, 1982

HOUSE FILE 2369

S-5474

1 Amend the amendment S-5448 to House File 2369, as
2 amended, passed and reprinted by the House, as follows:
3 1. Page 2, by striking line 39 and inserting in
4 lieu thereof the numbers and word "16, line 2."

S-5474 FILED
APRIL 6, 1982
Adopted 4/6 (p 1066)

BY BOB RUSH

HOUSE FILE 2369

S-5475

1 Amend the amendment S-5448 to House File 2369, as
2 amended, passed and reprinted by the House, as follows:
3 1. Page 1, by striking lines 34 through 36 and
4 inserting in lieu thereof the following:
5 "6. Page 4, by striking lines 12 through 22 and
6 inserting in lieu thereof the following:
7 "8. In any prosecution under this section,
8 evidence of the results of analysis of a specimen of
9 the defendant's blood, breath, saliva, or urine is
10 admissible upon proof of a proper foundation. In an
11 action in which a violation of subsection 1, paragraph
12 a of this section is alleged, evidence that there was,
13 at the time, ten hundredths or more of one percent by
14 weight of alcohol in the defendant's blood is
15 presumptive evidence that the defendant was under the
16 influence of an alcoholic beverage." "

S-5475 FILED
APRIL 6, 1982
Adopted 4/6 (p 1058)

BY BOB RUSH

S-5476

1 Amend House File 2369, as amended, passed and
2 reprinted by the House, as follows:

3 1. Page 1, line 11, by striking the word
4 "restricted" and inserting in lieu thereof the word
5 "~~restricted~~".

6 2. Page 2, line 34, by striking the words "time
7 credited for hours served after" and inserting in
8 lieu thereof the words "credit for any time the person
9 was confined in a jail or detention facility
10 following".

11 3. Page 3, by striking lines 1 through 5 and
12 inserting in lieu thereof the following:

13 "b. An aggravated misdemeanor for a second offense
14 and shall be imprisoned in the county jail not less
15 than seven days, which minimum term cannot be suspended
16 notwithstanding section 901.5, subsection 3, and
17 section 907.3, subsection 2.

18 c. A class "D" felony for a third offense and
19 each subsequent offense.

20 No conviction for, or plea of guilty to, a violation
21 of this section which occurred more than six years
22 prior to the date of the violation charged shall be
23 considered in determining that the violation charged
24 is a second, third or subsequent offense."

25 4. Page 4, line 33, by inserting after the word
26 "state" the words "while the license or privilege
27 is revoked or denied".

28 5. Page 5, line 2, by inserting after the word
29 "for" the words ", or a plea of guilty of,".

30 6. Page 6, by inserting after line 23 the
31 following:

32 "Sec. ____ Section 321A.17, subsection 1, Code
33 1981, is amended to read as follows:

34 1. Whenever the director, under any law of this
35 state, suspends or revokes the license of any person
36 upon receiving record of a conviction or a forfeiture
37 of bail or revokes the license of any person pursuant
38 to chapter 321B, the director shall also suspend the
39 registration for all motor vehicles registered in
40 the name of such the person, except that he the
41 director shall not suspend such the registration,
42 unless otherwise required by law, if such the person
43 has previously given or shall immediately give gives
44 and thereafter maintain maintains proof of financial
45 responsibility with respect to all motor vehicles
46 registered by such the person."

47 7. Page 6, by striking lines 27 through 29 and
48 inserting in lieu thereof the words "officer has
49 reasonable grounds to believe that a motor vehicle
50 operator may be violating or has".

S-5476
Page 2

- A 1 8. Page 7, line 24, by striking the words
2 "registered or".
- B 3 9. Page 8, by striking lines 12 and 13 and
4 inserting in lieu thereof the words "or revoked for
5 another reason."
- A 6 10. Page 12, line 2, by striking the word
7 "arrested" and inserting in lieu thereof the word
8 "arrested".
- 9 11. Page 12, by striking line 8 and inserting
10 in lieu thereof the words "that specified conditions
11 existed for chemical".
- 12 12. Page 12, line 21, by striking the words
13 "registered or" and inserting in lieu thereof the
14 words "~~registered-or~~".
- 15 13. Page 13, lines 6 and 7, by striking the words
16 "or the issuance of a temporary permit".
- 17 14. Page 13, line 24, by striking the words "-
18 TEMPORARY RESTRICTED PERMIT ISSUED".
- 19 15. Page 14, line 30, by inserting after the word
20 "revocation" the words "or denial".

S-5476 FILED
APRIL 6, 1982

BY A. R. BUD KUDART

A + B - Adopted 4/6 (y 1062)
C - 4/10

S-5486

1 Amend the amendment S-5448 to House File 2369, as
2 amended, passed and reprinted by the House, as follows:
3 1. Page 2, by striking line 20 and inserting in
4 lieu thereof the following:
5 "10. Page 10, by striking lines 4 through 13 and
6 inserting in lieu thereof the following:
7 "Sec. ____ Chapter 321B, Code 1981, is amended by
8 adding the following new section:
9 NEW SECTION. EXCEPTION. Notwithstanding any
10 provisions of this chapter to the contrary, if there
11 has been a traffic accident resulting in death or a
12 personal injury reasonably likely to cause death and
13 a peace officer has reasonable grounds to believe that
14 one or more of the drivers who were involved and whose
15 driving may have been the proximate cause of the
16 accident was intoxicated or under the influence of
17 an alcoholic beverage or other drug at the time of
18 the accident, the officer may require withdrawal of
19 a specimen of each such driver's blood for chemical
20 testing whether or not each driver consents to the
21 withdrawal, provided that specimens are withdrawn
22 by medical personnel pursuant to section 321B.4 and
23 reasonable care is exercised to ensure the health and
24 safety of the persons from whom specimens are
25 withdrawn. Any person who knowingly resists or
26 obstructs the withdrawal of a specimen under this
27 section is guilty of interference with official
28 acts and, in that event, sections 321B.7 and
29 321B.11 apply. This section does not apply, however,
30 to those persons referred to in section 321B.5.
31 Medical personnel who are authorized by section
32 321B.4 to withdraw specimens of blood and who use
33 due care and accepted medical practices to do so
34 are immune from liability for their actions in
35 complying with requests made of them under this
36 section or section 321B.4." "

S-5486 FILED BY GARY L. BAUGHER
APRIL 6, 1982
RULED OUT OF ORDER (p. 1061)

HOUSE FILE 2369

S-5488

1 Amend House File 2369 as amended, passed, and
2 reprinted by the House as follows:
3 1. Page 1, line 18, by striking the words "section
4 321.283 or".

S-5488 FILED & ADOPTED BY MICK LURA
APRIL 6, 1982 (p. 1062) GARY L. BAUGHER

HOUSE FILE 2369

S-5487

- 1 Amend House File 2369 as amended, passed, and
- 2 reprinted by the House as follows:
- 3 1. Page 5, lines 8 and 9 by striking the words
- 4 "or prior to or after the imposition of punishment
- 5 for any subsequent offense" and inserting in lieu
- 6 thereof the words "or-prior-to-or-after-the-imposition
- 7 of-punishment-for-any-subsequent-offense".

S-5487 FILED

BY MICK LURA

APRIL 6, 1982

GARY L. BAUGHER

Lost 4/13 (p. 1163)

HOUSE FILE 2369

S-5489

- 1 Amend the Amendment S-5448 to House File 2369 as
- 2 amended, passed and reprinted by the House as follows:
- 3 1. Page 1, line 20, by striking the words "or
- 4 institution" and inserting in lieu thereof the words
- 5 ", institution or community correctional facility".

S-5489 FILED & ADOPTED

BY A. R. BUD KUDART

APRIL 6, 1982 *(p. 1058)*

HOUSE FILE 2369

S-5493

- 1 Amend House File 2369 as amended, passed and
- 2 reprinted by the Senate as follows:
- 3 1. Page 4, by inserting after line 22 the
- 4 following:
- 5 "9. A person who has been convicted of a third
- 6 or subsequent violation of this section shall be
- 7 permanently ineligible to be issued a license or
- 8 permit under this chapter for the operation of a motor
- 9 vehicle and shall be permanently ineligible to register
- 10 a motor vehicle under this chapter. Upon a defendant's
- 11 conviction for a third or subsequent violation of
- 12 this section, the court shall notify the department
- 13 which shall revoke any license, permit or registration
- 14 held by the defendant."

S-5493 FILED

BY EMIL HUSAK

APRIL 6, 1982

JOE BROWN

ADOPTED AS AMENDED *by 5502 (p. 1065)*

motion & reconsideration 4/7 (p. 1096) prevailed 4/13 (p. 1166)

Placed out of order 4/16 (p. 1255)
HOUSE FILE 2369

S-5494

- 1 Amend the Amendment S-5476 to House File 2369 as
- 2 amended, passed and reprinted by the House as follows:
- 3 1. Page 1, line 14, by inserting after the word
- 4 "jail" the words "or community-based correctional
- 5 facility".

S-5494 FILED

BY ROBERT M. CARR

APRIL 6, 1982

LUCAS J. DeKOSTER

RULED OUT OF ORDER *(p. 1062)*

S-5482

1 Amend House File 2369 as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 14, by adding after line 32 the following:
4 "Sec. 225. Section 509.3, Code 1981, is amended
5 by adding the following new subsection:

6 NEW SUBSECTION. A provision which will constitute
7 an offer to make available to the policyholder under
8 policies providing hospital and medical coverage on
9 an expense incurred basis, benefits for the necessary
10 care and treatment of alcohol and other drug dependency
11 that are not less favorable than for physical illness
12 generally, subject to the same durational limits,
13 dollar limits, deductibles and coinsurance factors,
14 and which offer of benefits shall be subject to the
15 right of the policyholder to reject the coverage,
16 or select any alternative level of benefits offered
17 or negotiated with the insurer. Any benefits provided
18 in a facility defined in section 125.2, subsection
19 2, not meeting the definition of a hospital, shall
20 be payable as if provided in a hospital if determined
21 to be necessary care and treatment, approved and
22 monitored by a physician licensed to practice medicine
23 and surgery or osteopathic medicine and surgery.
24 This provision shall apply to policies delivered or
25 issued for delivery more than one hundred twenty days
26 after the effective date of this Act, but shall not
27 apply to blanket, short-term travel, accident only,
28 limited or specified disease, individual or group
29 conversion policies, nor to policies designed only
30 for issuance to persons eligible for coverage under
31 Title XVIII of the Social Security Act, known as
32 medicare, or any other similar coverage under state
33 or federal governmental plans.

34 Sec. 226. Section 514.5, Code 1981, is amended
35 by adding the following new subsection:

36 NEW SUBSECTION. Hospital service organizations
37 shall offer and make available under group plans
38 providing hospital and medicare coverage on an expense
39 incurred, or service basis, benefits for the necessary
40 care and treatment of alcohol and other drug dependency
41 that are not less favorable than for physical illness
42 generally, subject to the same durational limits,
43 dollar limits, deductibles and coinsurance factors,
44 and which offer of benefits shall be subject to the
45 right of the subscriber to reject the coverage, or
46 select any alternative level of benefits offered or
47 negotiated with the hospital service organization.
48 Any benefits provided in a facility defined in section
49 125.2, subsection 2, not meeting the definition of
50 a hospital, shall be payable as if provided in a

1 hospital if determined to be necessary care and
 2 treatment, approved and monitored by a physician
 3 licensed to practice medicine and surgery or
 4 osteopathic medicine and surgery. This provision
 5 shall apply to contracts delivered or issued for
 6 delivery more than one hundred twenty days after the
 7 effective date of this Act, but shall not apply to
 8 contracts designed only for issuance to subscribers
 9 eligible for coverage under Title XVIII of the Social
 10 Security Act, known as medicare, or any other similar
 11 coverage under state or federal governmental plans.

12 Sec. 227. Section 514B.9, Code 1981, is amended
 13 by adding the following new subsection:

14 NEW SUBSECTION. The health care services under
 15 group plans shall make available to enrollees benefits
 16 for the necessary care and treatment of alcohol and
 17 other drug dependency that are not less favorable
 18 than for physical illness generally, subject to the
 19 same durational limits, dollar limits, deductibles
 20 and coinsurance factors, and which offer of benefits
 21 shall be subject to the right of the enrollee to
 22 reject the coverage, or select any alternative level
 23 of benefits offered or negotiated with the
 24 organization. Any benefits provided in a facility
 25 defined in section 125.2, subsection 2, not meeting
 26 the definition of a hospital, shall be payable as
 27 if provided in a hospital if determined to be necessary
 28 care and treatment, approved and monitored by a
 29 physician licensed to practice medicine and surgery
 30 or osteopathic medicine and surgery. This coverage
 31 shall apply to services or benefits provided after
 32 one hundred twenty days after the effective date of
 33 this Act, but shall not apply to enrollees eligible
 34 for coverage under Title XVIII of the Social Security
 35 Act, known as medicare, or any other similar coverage
 36 under state or federal governmental plans.

37 Sec. 228. Sections 225, 226, and 227 of this Act
 38 shall take effect July 1, 1982."

39 2. Page 15, line 33, by striking the words "This
 40 Act" and inserting in lieu thereof the words and
 41 figures "Sections 1 through 24 and sections 25, 26,
 42 and 27 of this Act,".

43 3. Renumber as necessary.

S-5482 FILED

APRIL 6, 1982

H/S 4/3 (p. 1163)

BY SUE YENGER

EDGAR HOLDEN

TOM SLATER

HOUSE FILE 2369

S-5484

1 Amend the Amendment S-5448 to House File 2369 as
 2 amended, passed, and reprinted by the House as
 3 follows:

4 1. Page 2, line 37, by inserting after the word
 5 "section" the words "or chapter 321B".

S-5484 FILED & ADOPTED

BY GARY L. BAUGHER

APRIL 6, 1982 *(p. 1060)*

S-5495

1 Amend the amendment S-5448 to House File 2369,
2 as amended, passed and reprinted by the House, as
3 follows:

4 1. Page 2, by striking line 20 and inserting in
5 lieu thereof the following:

6 "10. Page 10, by striking lines 4 through 13 and
7 inserting in lieu thereof the following:

8 "Sec. ____ Chapter 321B, Code 1981, is amended
9 by adding the following new section:

10 NEW SECTION. EXCEPTION. Notwithstanding any
11 provisions of this chapter to the contrary, if there
12 has been a traffic accident resulting in death or
13 a personal injury reasonably likely to cause death
14 and a peace officer has reasonable grounds to believe
15 that one or more of the drivers who were involved
16 and whose driving may have been the proximate cause
17 of the accident was intoxicated or under the influence
18 of an alcoholic beverage or other drug at the time
19 of the accident, the officer may require that each
20 driver give a specimen of breath, saliva or urine
21 for chemical testing whether or not each driver
22 consents to the test. However, the person may request
23 a withdrawal of his or her blood instead of the breath,
24 saliva or urine specimen. In such instance the blood
25 specimen shall be withdrawn by medical personnel
26 pursuant to section 321B.4 and reasonable care shall
27 be exercised to ensure the health and safety of the
28 persons from whom specimens are withdrawn. Any person
29 who knowingly resists or obstructs the withdrawal
30 of a specimen under this section is guilty of
31 interference with official acts and, in that event,
32 sections 321B.7 and 321B.11 apply. This section does
33 not apply, however, to those persons referred to in
34 section 321B.5.

35 Medical personnel who are authorized by section
36 321B.4 to withdraw specimens of blood and who use
37 due care and accepted medical practices to do so are
38 immune from liability for their actions in complying
39 with requests made of them under this section or
40 section 321B.4." "

S-5495 FILED & WITHDRAWN
APRIL 6, 1982 (7-1061)

BY ARTHUR A. SMALL, JR.

SENATE 14
APRIL 7, 1982

HOUSE FILE 2369

S-5498

1 Amend the amendment S-5448 to House File 2369,
2 as amended, passed and reprinted by the House, as
3 follows:

4 1. Page 2, by striking line 20 and inserting in
5 lieu thereof the following:

6 "10. Page 10, by striking lines 4 through 13 and
7 inserting in lieu thereof the following:

8 "Sec. ____ Chapter 321B, Code 1981, is amended
9 by adding the following new section:

10 NEW SECTION. EXCEPTION. Notwithstanding any
11 provisions of this chapter to the contrary, if there
12 has been a traffic accident resulting in death or
13 a personal injury reasonably likely to cause death
14 and a peace officer has reasonable grounds to believe
15 that one or more of the drivers who were involved
16 and whose driving may have been the proximate cause
17 of the accident was intoxicated or under the influence
18 of an alcoholic beverage or other drug at the time
19 of the accident, the officer may require a specimen
20 of each driver's blood, breath, saliva or urine for
21 chemical testing whether or not each driver consents
22 to the test. However, if the person objects to
23 withdrawal of blood, the person shall give a breath,
24 saliva or urine specimen. Blood specimen shall be
25 withdrawn by medical personnel pursuant to section
26 321B.4 and reasonable care shall be exercised to
27 ensure the health and safety of the persons from whom
28 specimens are withdrawn. Any person who knowingly
29 resists or obstructs the withdrawal of a specimen
30 under this section is guilty of interference with
31 official acts and, in that event, sections 321B.7
32 and 321B.11 apply. This section does not apply,
33 however, to those persons referred to in section
34 321B.5.

35 Medical personnel who are authorized by section
36 321B.4 to withdraw specimens of blood and who use
37 due care and accepted medical practices to do so are
38 immune from liability for their actions in complying
39 with requests made of them under this section or
40 section 321B.4."

S-5498 FILED & ADOPTED
APRIL 6, 1982 (p.1061)

BY ARTHUR A. SMALL, JR.

HOUSE FILE 2369

S-5499

1 Amend House File 2369 as amended, passed, and
2 reprinted by the House as follows:

3 1. Page 3, line 3, by inserting after the word
4 "jail" the words "or community-based correctional
5 facility".

S-5499 FILED & ADOPTED
APRIL 6, 1982 (p.1063)

BY ROBERT CARR
LUCAS J. deKOSTER

S-5569

1 Amend House File 2369 as amended, passed and
2 reprinted by the House, as follows:

3 1. Page 4, by inserting after line 22 the
4 following:

5 "9. In lieu of imposing any other punishment under
6 this section, the court may impose the punishment
7 of this subsection on a defendant convicted of a third
8 or subsequent violation of this section. When punish-
9 ment is imposed under this subsection the court shall
10 order that the defendant shall be ineligible for a
11 period of five years to be issued a license or permit
12 to operate a motor vehicle under this chapter and
13 shall be ineligible for a period of five years to
14 register a motor vehicle under this chapter. Upon
15 the issuance of the order, the court shall notify
16 the department which shall revoke any license, permit
17 and registration held by the defendant. One year
18 after the issuance of the order, the defendant may
19 petition the court to restore the defendant's
20 eligibility for a license, permit and registration.
21 Upon a satisfactory showing to the court that the
22 defendant has completed a program of treatment and
23 has recovered from the defendant's addiction,
24 dependency or tendency to chronically abuse alcohol
25 or drugs, the court may restore the defendant's
26 eligibility and shall notify the department of the
27 restoration."

S-5569 FILED
APRIL 13, 1982

*Placed out of order 4/16
(p 1255)*

BY RICHARD COMITO
LUCAS J. DeKOSTER
ARTHUR A. SMALL, JR.
JOE BROWN

HOUSE FILE 2369

S-5501

- 1 Amend House File 2369 as amended, passed and
 2 reprinted by the House as follows:
 3 1. Page 3, lines 1 and 2, by striking the words
 4 "committed within a six-year period".
 5 2. Page 3, line 5, by striking the words
 6 "committed within a six-year period".
 7 3. Page 3, by inserting after line 5 the following:
 8 "No conviction for, or plea of guilty to, a violation
 9 of this section which occurred more than six years
 10 prior to the date of the violation charged shall be
 11 considered in determining that the violation charged
 12 is a second, third or subsequent offense."

S-5501 FILED & ADOPTED BY A. R. BUD KUDART
 APRIL 6, 1982 (p. 1063)

HOUSE FILE 2369

S-5502

- 1 Amend the Amendment S-5493 to House File 2369 as
 2 amended, passed and reprinted by the House as follows:
 3 1. Page 1, line 7, by striking the word "permanently".
 4 2. Page 1, line 9, by striking the word "permanently".
 5 3. Page 1, line 10, by inserting after the word
 6 "chapter" the words "for a period of five years".
 7 4. Page 1, line 14, by inserting after the word
 8 "defendant" the words "for a period of five years".

S-5502 FILED & ADOPTED BY RICHARD COMITO
 APRIL 6, 1982 (p. 1064)

HOUSE FILE 2369

S-5561

- 1 Amend House File 2369 as amended, passed and
 2 reprinted by the House, as follows:
 3 1. Page 2, line 21, by inserting after the word
 4 "FOR" the words "EVALUATION AND".
 5 2. Page 3, line 14, by inserting after the words
 6 "for the" the words "evaluation and".
 7 3. Page 5, line 12, by inserting after the word
 8 "seek" the word "evaluation".
 9 4. Page 5, line 31, by inserting after the word
 10 "complete" the word "evaluation".
 11 5. Page 6, line 7, by inserting after the words
 12 "course or" the word "evaluation".
 13 6. Page 8, line 9, by inserting after the word
 14 "vehicle" the words "or when the person's use of a
 15 motor vehicle is necessary to attend evaluation,
 16 treatment or educational services for alcohol or drug
 17 dependency".

S-5561 FILED & ADOPTED BY LUCAS J. DeKOSTER
 APRIL 13, 1982 (p. 1163)

S-5635

1 Amend House File 2369 as amended, passed and
2 reprinted by the House, as follows:

3 1. Page 4, by inserting after line 22 the
4 following:

5 "9. When a defendant is convicted of a third or
6 subsequent violation of this section the court shall
7 order under section 321.560 that the defendant shall
8 be ineligible for a period of six years to be issued
9 a license or permit to operate a motor vehicle under
10 this chapter. Upon the issuance of the order, the
11 court shall notify the department which shall revoke
12 any license or permit to operate a motor vehicle held
13 by the defendant. Not sooner than two years after
14 the issuance of the order, the defendant may petition
15 the court to restore the defendant's eligibility for
16 a license or permit to operate a motor vehicle. Upon
17 a satisfactory showing to the court that the defendant
18 has completed a program of treatment and that recovery
19 from the defendant's chronic dependency upon and abuse
20 of alcohol or drugs has occurred and will continue,
21 the court may restore the defendant's eligibility
22 and shall notify the department of the restoration."

S-5635 FILED & ADOPTED
APRIL 16, 1982 (p 1254)

BY BILL HUTCHINS
ALVIN MILLER
JOE BROWN

HOUSE FILE 2369

S-5602

1 Amend House File 2369 as amended, passed and
2 reprinted by the House, as follows:

3 1. Page 4, by inserting after line 22 the
4 following:

5 "9. When a defendant is convicted of a third or
6 subsequent violation of this section the court shall
7 order that the defendant shall be ineligible for a
8 period of five years to be issued a license or permit
9 to operate a motor vehicle under this chapter. Upon
10 the issuance of the order, the court shall notify
11 the department which shall revoke any license or
12 permit to operate a motor vehicle held by the
13 defendant. Not sooner than one year after the issuance
14 of the order, the defendant may petition the court
15 to restore the defendant's eligibility for a license
16 or permit to operate a motor vehicle. Upon a
17 satisfactory showing to the court that the defendant
18 has completed a program of treatment and has recovered
19 from the defendant's addiction, dependency or tendency
20 to chronically abuse alcohol or drugs, the court may
21 restore the defendant's eligibility and shall notify
22 the department of the restoration."

S-5602 FILED
APRIL 14, 1982

BY BILL HUTCHINS
ALVIN MILLER
JOE BROWN

Placed out of order 4/16 (p 1255)

HOUSE FILE 2369

S-5629

1 Amend the Amendment S-5602 to House File 2369
2 as amended, passed and reprinted by the House as
3 follows:

4 1. Page 1, line 8, by striking the word "five"
5 and inserting in lieu thereof the word "six".

6 2. Page 1, line 13, by striking the word "one"
7 and inserting in lieu thereof the word "two".

S-5629 FILED
APRIL 16, 1982

BY BILL HUTCHINS

RULED OUT OF ORDER (p 1255)

- 1 Amend House File 2369 as amended, passed and
2 reprinted by the House as follows:
- 3 1. Page 1, line 11, by striking the word
4 "restricted" and inserting in lieu thereof the word
5 "restriceted".
 - 6 2. Page 1, line 18, by striking the words "section
7 321.283 or".
 - 8 3. Page 2, line 21, by inserting after the word
9 "FOR" the words "EVALUATION AND".
 - 10 4. Page 2, line 34, by striking the word
11 "consecutive".
 - 12 5. Page 2, line 34, by striking the words "time
13 credited for hours served after" and inserting in
14 lieu thereof the words "credit for any time the person
15 was confined in a jail or detention facility
16 following".
 - 17 6. Page 2, line 35, by inserting after the word
18 "arrest." the words "The court, where possible, shall
19 accommodate the sentence to the work schedule of the
20 defendant."
 - 21 7. Page 3, lines 1 and 2, by striking the words
22 "committed within a six-year period".
 - 23 8. Page 3, line 3, by inserting after the word
24 "jail" the words "or community-based correctional
25 facility".
 - 26 9. Page 3, line 3, by inserting after the word
27 "days" the words ", which minimum term cannot be
28 suspended notwithstanding section 901.5, subsection
29 3 and section 907.3, subsection 2".
 - 30 10. Page 3, line 5, by striking the words
31 "committed within a six-year period".
 - 32 11. Page 3, by inserting after line 5 the
33 following:
34 "No conviction for, or plea of guilty to, a
35 violation of this section which occurred more than
36 six years prior to the date of the violation charged
37 shall be considered in determining that the violation
38 charged is a second, third or subsequent offense."
39 12. Page 3, by striking lines 9 through 13 and
40 inserting in lieu thereof the following:
41 "4. As a condition of a suspended sentence or
42 portion of sentence for a second, third or subsequent
43 offense in violation of this section, the court upon
44 hearing may commit the defendant for inpatient
45-treatment of alcoholism or drug addiction or dependency
46 to any hospital, institution or community correctional
47 facility in Iowa providing such treatment. The time
48 for which the defendant is committed for treatment
49 shall be credited against the defendant's sentence.
50 The court".

H-5884
Page Two

1 13. Page 3, line 14, by inserting after the words
2 "for the" the words "evaluation and".

3 14. Page 4, line 2, by inserting after the word
4 "judgment." the words and figure "A person whose
5 license to operate a motor vehicle is revoked pursuant
6 to this subsection may be issued a temporary restricted
7 driving permit by the department allowing the person
8 to drive to and from the person's home and place of
9 employment and in the person's employment, if the
10 person's license to operate a motor vehicle is not
11 subject to revocation under section 321B.7 for refusal
12 to submit to chemical testing."

13 15. Page 4, by striking lines 12 through 22 and
14 inserting in lieu thereof the following:

15 "8. In any prosecution under this section, evidence
16 of the results of analysis of a specimen of the
17 defendant's blood, breath, saliva, or urine is
18 admissible upon proof of a proper foundation. In
19 an action in which a violation of subsection 1,
20 paragraph a of this section is alleged, evidence that
21 there was, at the time, ten hundredths or more of
22 one percent by weight of alcohol in the defendant's
23 blood is presumptive evidence that the defendant was
24 under the influence of an alcoholic beverage."

25 16. Page 4, by inserting after line 22 the
26 following:

27 "9. When a defendant is convicted of a third or
28 subsequent violation of this section the court shall
29 order under section 321.560 that the defendant shall
30 be ineligible for a period of six years to be issued
31 a license or permit to operate a motor vehicle under
32 this chapter. Upon the issuance of the order, the
33 court shall notify the department which shall revoke
34 any license or permit to operate a motor vehicle held
35 by the defendant. Not sooner than two years after
36 the issuance of the order, the defendant may petition
37 the court to restore the defendant's eligibility for
38 a license or permit to operate a motor vehicle. Upon
39 a satisfactory showing to the court that the defendant
40 has completed a program of treatment and that recovery
41 from the defendant's chronic dependency upon and abuse
42 of alcohol or drugs has occurred and will continue,
43 the court may restore the defendant's eligibility
44 and shall notify the department of the restoration."

45 17. Page 4, line 33, by inserting after the word
46 "state" the words "while the license or privilege
47 is revoked or denied".

48 18. Page 5, line 2, by inserting after the word
49 "for" the words ", or a plea of guilty of,".

50 19. Page 5, line 11, by striking the word "also"

1 and inserting in lieu thereof the words "alternatively
2 or additionally".

3 20. Page 5, line 12, by inserting after the word
4 "seek" the word "evaluation".

5 21. Page 5, line 31, by inserting after the word
6 "complete" the word "evaluation".

7 22. Page 6, line 7, by inserting after the words
8 "course or" the word "evaluation".

9 23. Page 6, by striking lines 8 and 9 and inserting
10 in lieu thereof the following:

11 "Sec. 8. Section 321.283, subsection 6, Code 1981,
12 is amended to read as follows:

13 6. Temporary permit. Any person required to
14 attend a course by the provisions of this division,
15 who is subject to a drivers license suspension or
16 revocation, may be issued a temporary driving permit
17 by the department restricted to driving to and from
18 his the person's home, place of employment, in his
19 the person's employment and the location of the
20 required course. Any person who does not receive
21 a temporary driving permit may after the period of
22 license suspension or revocation under for a violation
23 of section 321.281 have his or her drivers license
24 reissued subject to suspension for failure to comply
25 with the provisions of this division. This section
26 shall not permit the issuance of a temporary driving
27 permit or reissuance of a drivers license where the
28 provisions of chapter 321A have not been complied
29 with.

30 Successful completion of a course required by this
31 division shall not reverse a drivers license suspension
32 or revocation or reduce the length of a suspension
33 or revocation under for a violation of section 321.281
34 however, the director may reduce the length of a
35 suspension or revocation contingent upon successful
36 completion of a course for drinking drivers or under
37 chapter 321B."

38 24. Page 6, by inserting after line 23 the
39 following:

40 "Sec. ____ . Section 321A.17, subsection 1, Code
41 1981, is amended to read as follows:

42 1. Whenever the director, under any law of this
43 state, suspends or revokes the license of any person
44 upon receiving record of a conviction or a forfeiture
45 of bail or revokes the license of any person pursuant
46 to chapter 321B, the director shall also suspend the
47 registration for all motor vehicles registered in
48 the name of such the person, except that he the
49 director shall not suspend such the registration,
50 unless otherwise required by law, if such the person

1 has previously given or ~~shall~~ immediately ~~give~~ gives
2 and thereafter ~~maintain~~ maintains proof of financial
3 responsibility with respect to all motor vehicles
4 registered by ~~such~~ the person."

5 25. Page 6, by striking lines 27 through 29 and
6 inserting in lieu thereof the words "officer has
7 reasonable grounds to believe that a motor vehicle
8 operator may be violating or has".

9 26. Page 7, line 21, by inserting after the word
10 "provisions" the words "arising from separate
11 occurrences".

12 27. Page 7, line 24, by striking the words
13 "registered or".

14 28. Page 8, line 9, by inserting after the word
15 "vehicle," the words "or when the person's use of
16 a motor vehicle is necessary to attend evaluation,
17 treatment or educational services for alcohol or drug
18 dependency,".

19 29. Page 8, by striking lines 12 and 13 and
20 inserting in lieu thereof the words "or revoked for
21 another reason."

22 30. Page 8, by striking lines 24 through 27.

23 31. Page 10, by striking lines 4 through 13 and
24 inserting in lieu thereof the following:

25 "Sec. ____ Chapter 321B, Code 1981, is amended
26 by adding the following new section:

27 NEW SECTION. EXCEPTION. Notwithstanding any
28 provisions of this chapter to the contrary, if there
29 has been a traffic accident resulting in death or
30 a personal injury reasonably likely to cause death
31 and a peace officer has reasonable grounds to believe
32 that one or more of the drivers who were involved
33 and whose driving may have been the proximate cause
34 of the accident was intoxicated or under the influence
35 of an alcoholic beverage or other drug at the time
36 of the accident, the officer may require a specimen
37 of each driver's blood, breath, saliva or urine for
38 chemical testing whether or not each driver consents
39 to the test. However, if the person objects to
40 withdrawal of blood, the person shall give a breath,
41 saliva or urine specimen. Blood specimens shall be
42 withdrawn by medical personnel pursuant to section
43 321B.4 and reasonable care shall be exercised to
44 ensure the health and safety of the persons from whom
45 specimens are withdrawn. Any person who knowingly
46 resists or obstructs the withdrawal of a specimen
47 under this section is guilty of interference with
48 official acts and, in that event, sections 321B.7
49 and 321B.11 apply. This section does not apply,
50 however, to those persons referred to in section

H-5884
Page Five

- 1 321B.5.
- 2 Medical personnel who are authorized by section
- 3 321B.4 to withdraw specimens of blood and who use
- 4 due care and accepted medical practices to do so are
- 5 immune from liability for their actions in complying
- 6 with requests made of them under this section or
- 7 section 321B.4."
- 8 32. Page 12, line 2, by striking the word
- 9 "arrested" and inserting in lieu thereof the word
- 10 "arrested".
- 11 33. Page 12, by striking line 8 and inserting
- 12 in lieu thereof the words "that specified conditions
- 13 existed for chemical".
- 14 34. Page 12, lines 12 and 13, by striking the
- 15 words "~~not-less-than-one-hundred-twenty-days-nor-more~~
- 16 ~~than~~" and inserting in lieu thereof the words "not
- 17 less than one hundred twenty eighty days nor more
- 18 than".
- 19 35. Page 12, line 21, by striking the words
- 20 "registered or" and inserting in lieu thereof the
- 21 words "~~registered-or~~".
- 22 36. Page 13, lines 6 and 7, by striking the words
- 23 "or the issuance of a temporary permit".
- 24 37. Page 13, line 24, by striking the words "-
- 25 TEMPORARY RESTRICTED PERMIT ISSUED".
- 26 38. Page 14, line 30, by inserting after the word
- 27 "revocation" the words "or denial".
- 28 39. Page 14, by striking line 33 through page
- 29 15, line 20.
- 30 40. Page 15, by striking lines 21 through 32 and
- 31 inserting in lieu thereof the following:
- 32 "Sec. 27. Section 907.3, subsection 1, unnumbered
- 33 paragraph 2, Code 1981, is amended by adding the
- 34 following new lettered subparagraph:
- 35 NEW LETTERED SUBPARAGRAPH. The offense is a
- 36 violation of section 321.281 and, within the previous
- 37 six years, the person has been convicted of a violation
- 38 of that section or the person's driver's license has
- 39 been revoked pursuant to that section or chapter
- 40 321B."
- 41 41. Page 15, by striking line 33 through page
- 42 16, line 2.
- 43 42. By renumbering the sections to conform with
- 44 this amendment.

HOUSE FILE 2369

H-5927

- 1 Amend amendment H-5926 to the Senate amendment
- 2 H-5584 to House File 2369 as amended, passed and
- 3 reprinted by the House, as follows:
- 4 1. Page 3, line 30, by striking the words "by
- 5 reason of religious convictions".

H-5927 FILED APRIL 21, 1982 BY RITSEMA of Sioux
ADOPTED (p. 1634)

HOUSE FILE 2369

H-5930

- 1 Amend amendment H-5926 to amendment H-5884, the
- 2 Senate amendment to House File 2369, as amended,
- 3 passed and reprinted by the House, as follows:
- 4 1. Page 1, line 29, by striking the word "the"
- 5 and inserting in lieu thereof the word "or".

H-5930 FILED APRIL 21, 1982 BY RITSEMA of Sioux
ADOPTED BY UNANIMOUS CONSENT (p. 1635)

HOUSE FILE 2369

H-5931

- 1 Amend H-5884, the Senate amendment to House File
- 2 2369, as passed and reprinted by the House as follows:
- 3 1. Page 2, by striking lines 45 through 47.
- 4 2. Page 5, by striking lines 28 and 29.

H-5931 FILED APRIL 21, 1982 BY HALVORSON of Clayton
A-WITHDRAWN
B-ADOPTED (p. 1637)

1 Amend the Senate amendment H-5884 to House File
2 2369 as amended, passed and reprinted by the House,
3 as follows:

D4 1. Page 1, by striking lines 17 through 20.

5 2. Page 2, by striking lines 27 through 44 and
6 inserting in lieu thereof the following:

7 "9. a. Upon a plea or verdict of guilty of a
8 third or subsequent violation of this section, the
9 court in which the plea was entered or the verdict
10 was returned shall order that the defendant's license
11 or permit to operate motor vehicles be revoked by
12 the department and that the defendant shall remain
13 ineligible for a new license or permit for a period
14 of six years. Any license or permit to operate motor
15 vehicles held by the defendant shall be surrendered
16 to the court who shall forward it to the department
17 with a copy of the order for revocation.

18 b. After two years from the date of the order
19 for revocation, the defendant may apply to the court
20 for restoration of the defendant's eligibility for
21 a license or permit to operate motor vehicles. The
22 application may be granted only if all of the following
23 are shown by the defendant by clear and convincing
24 evidence:

25 (1) The defendant has completed an evaluation
26 and, if recommended by the evaluation, a program of
27 treatment for chemical dependency and is recovering,
28 or has substantially recovered, from that dependency
29 on the tendency to abuse alcohol or drugs.

30 (2) The defendant has not been arrested and charged
31 since the date of the revocation order for any
32 subsequent violations of this section or section
33 123.46, or any comparable city or county ordinance,
34 and the defendant's license or permit has not been
35 subject to a subsequent revocation under chapter 321B.

36 (3) The defendant has abstained from the
37 consumption of alcoholic beverages and controlled
38 substances, except at the direction of a licensed
39 physician or pursuant to a valid prescription.

40 (4) The defendant's license or permit is not
41 currently subject to suspension or revocation for
42 any other reason.

43 c. The court shall forward to the department a
44 record of any application submitted under paragraph
45 b and the results of the court's disposition of the
46 application."

B47 3. Page 4, by striking lines 14 through 18.

48 4. Page 4, by striking line 27 through page 5,
49 line 7, and inserting in lieu thereof the following:

A 50 "NEW SECTION. TESTS PURSUANT TO WARRANTS.

1 1. Refusal to consent to a test under section
2 321B.3 does not prohibit the withdrawal of a specimen
3 for chemical testing pursuant to a search warrant
4 issued in the investigation of a suspected violation
5 of section 707.5 where the following grounds exist:

6 a. A traffic accident has resulted in a death
7 or personal injury reasonably likely to cause death,
8 and

9 b. There are reasonable grounds to believe that
10 one or more of the persons whose driving may have
11 been the proximate cause of the accident was violating
12 section 321.281 at the time of the accident.

13 2. Search warrants may be issued under this section
14 in full compliance with chapter 808 or they may be
15 issued under subsection 3 of this section.

A 16 3. Notwithstanding section 808.3, the issuance
17 of a search warrant under this section may be based
18 upon sworn oral testimony communicated by telephone
19 if the magistrate who is asked to issue the warrant
20 is satisfied that the circumstances make it reasonable
21 to dispense with a written affidavit. The following
22 shall then apply:

23 a. When a caller applies for the issuance of a
24 warrant under this section and the magistrate becomes
25 aware of the purpose of the call, the magistrate shall
26 place under oath the person applying for the warrant.

27 b. The person applying for the warrant shall
28 prepare a duplicate warrant and read the duplicate
29 warrant, verbatim, to the magistrate who shall enter,
30 verbatim, what is read to the magistrate on a form
31 that will be considered the original warrant. The
32 magistrate may direct that the warrant be modified.

33 c. The oral application testimony shall set forth
34 facts and information tending to establish the
35 existence of the grounds for the warrant and shall
36 describe with a reasonable degree of specificity the
37 person or person from whom a specimen is to be
38 withdrawn and the location where the withdrawal of
39 the specimen or specimens is to take place.

40 d. If a voice recording device is available, the
41 magistrate may record by means of that device all
42 of the call after the magistrate becomes aware of
43 the purpose of the call. Otherwise, the magistrate
44 shall cause a stenographic or longhand memorandum
45 to be made of the oral testimony of the person applying
46 for the warrant.

47 e. If the magistrate is satisfied from the oral
48 testimony that the grounds for the warrant exists
49 or that there is probable cause to believe that they
50 exist, the magistrate shall order the issuance of

H-5926
Page 3

1 the warrant by directing the person applying for the
2 warrant to sign the magistrate's name on the duplicate
3 warrant. The magistrate shall immediately sign the
4 original warrant and enter on its face the exact time
5 when the issuance was ordered.

6 f. The person who executes the warrant shall enter
7 the time of execution on the face of the duplicate
8 warrant.

9 g. The magistrate shall cause any record of the
10 call made by means of a voice recording device to
11 be transcribed, shall certify the accuracy of the
12 transcript, and shall file the transcript and the
13 original record with the clerk. If a stenographic
14 or longhand memorandum was made of the oral testimony
15 of the person who applied for the warrant, the
16 magistrate shall file a signed copy with the clerk.

17 h. The clerk of court shall maintain the original
18 and duplicate warrants along with the record of the
19 telephone call and any transcript or memorandum made
20 of the call in a confidential file until a charge,
21 if any, is filed.

22 4. Search warrants issued under this section shall
23 authorize and direct peace officers to secure the
24 withdrawal of blood specimens by medical personnel
25 under section 321B.4. Reasonable care shall be
26 exercised to ensure the health and safety of the
27 persons from whom specimens are withdrawn in execution
28 of the warrants. If a person from whom a specimen
29 is to be withdrawn objects to the withdrawal of blood
30 by reason of religious convictions, the person is
31 capable of giving a specimen of breath, and a direct
32 breath testing instrument is readily available, the
33 warrant may be executed by the withdrawal of a specimen
34 of breath for chemical testing.

35 5. The act of any person knowingly resisting or
36 obstructing the withdrawal of a specimen pursuant
37 to a search warrant issued under this section
38 constitutes a contempt punishable by a fine not
39 exceeding one thousand dollars or imprisonment in
40 a county jail not exceeding one year or by both such
41 fine and imprisonment. Also, if the withdrawal of
42 a specimen is so resisted or obstructed, sections
43 321B.7 and 321B.11 apply.

44 6. Nonsubstantive variances between the contents
45 of the original and duplicate warrants shall not cause
46 a warrant issued under subsection 3 of this section
47 to be considered invalid.

48 7. Specimens obtained pursuant to warrants issued
49 under this section are not subject to disposition
50 under section 808.9 or chapter 809.

1 8. Subsections 1 through 7 of this section do
2 not apply where a test may be administered under
3 section 321B.5.

4 9. Medical personnel who use reasonable care and
5 accepted medical practices in withdrawing blood
6 specimens are immune from liability for their actions
7 in complying with requests made of them pursuant to
8 search warrants or pursuant to section 321B.4."

9 5. Page 5, by striking lines 14 through 18 and
10 inserting in lieu thereof the following:

11 "34. Page 12, by striking lines 12 through 17
12 and inserting in lieu thereof the following:

13 "nonresident operating privilege for a period of ~~not~~
14 ~~less-than-one-hundred-twenty-days-or-more-than-one~~
15 ~~year~~ equal to one hundred fifty percent of the length
16 of time the person's license would have been revoked

17 under section 12 of this Act if the person had
18 submitted to chemical testing and the test results
19 had shown ten hundredths or more of one percent by
20 weight of alcohol in the blood; or if the person is
21 a resident without a license or permit to operate
22 a motor vehicle in this state, the ~~director~~ department
23 shall deny to the person the issuance of a license
24 or permit for the same period a license or permit
25 would be revoked within one year from the date of
26 the alleged".

27 6. Page 5, by striking lines 22 and 23.

28 7. Page 5, by striking lines 28 and 29 and
29 inserting in lieu thereof the following:

30 "39. Page 15, line 18, by inserting after the
31 figure "46." the following: "However, in proceedings
32 for a first offense violation of section 321.281,
33 a verbatim record is not required if the proceeding
34 is electronically recorded in the manner provided
35 in R.Cr.P. 48."

H-5926 FILED APRIL 21, 1982 BY RITSEMA of Sioux

A-ADOPTED *as amended by 59274 5930 (p. 1635)*

B-ADOPTED (p. 1636)

C-OUT OF ORDER (p. 1637)

D-ADOPTED (p. 1636)

HOUSE FILE 2369

H-5919

1 Amend Senate amendment H-5884 to House File 2369
2 as amended, passed and reprinted by the Senate as
3 follows:

- 4 1. Page 2, by striking lines 3 through 12.
- 5 2. Page 3, by striking lines 9 through 37.

H-5919 FILED APRIL 21, 1982 BY JOHNSON of Linn

LOST (p. 1636)

House Amendment to Senate Amendment to
House File 2369

S-5732

1 Amend the Senate amendment H-5884 to House File
2 2369 as amended, passed and reprinted by the House,
3 as follows:

4 1. Page 1, by striking lines 17 through 20.

5 2. Page 2, by striking lines 27 through 44 and
6 inserting in lieu thereof the following:

7 "9. a. Upon a plea or verdict of guilty of a
8 third or subsequent violation of this section, the
9 court in which the plea was entered or the verdict
10 was returned shall order that the defendant's license
11 or permit to operate motor vehicles be revoked by
12 the department and that the defendant shall remain
13 ineligible for a new license or permit for a period
14 of six years. Any license or permit to operate motor
15 vehicles held by the defendant shall be surrendered
16 to the court who shall forward it to the department
17 with a copy of the order for revocation.

18 b. After two years from the date of the order
19 for revocation, the defendant may apply to the court
20 for restoration of the defendant's eligibility for
21 a license or permit to operate motor vehicles. The
22 application may be granted only if all of the following
23 are shown by the defendant by clear and convincing
24 evidence:

25 (1) The defendant has completed an evaluation
26 and, if recommended by the evaluation, a program of
27 treatment for chemical dependency and is recovering,
28 or has substantially recovered, from that dependency
29 on or tendency to abuse alcohol or drugs.

30 (2) The defendant has not been arrested and charged
31 since the date of the revocation order for any
32 subsequent violations of this section or section
33 123.46, or any comparable city or county ordinance,
34 and the defendant's license or permit has not been
35 subject to a subsequent revocation under chapter 321B.

36 (3) The defendant has abstained from the
37 consumption of alcoholic beverages and controlled
38 substances, except at the direction of a licensed
39 physician or pursuant to a valid prescription.

40 (4) The defendant's license or permit is not
41 currently subject to suspension or revocation for
42 any other reason.

43 c. The court shall forward to the department a
44 record of any application submitted under paragraph
45 b and the results of the court's disposition of the
46 application."

47 3. Page 4, by striking lines 14 through 18.

48 4. Page 4, by striking line 27 through page 5,
49 line 7, and inserting in lieu thereof the following:

50 "NEW SECTION. TESTS PURSUANT TO WARRANTS.

1 1. Refusal to consent to a test under section
2 321B.3 does not prohibit the withdrawal of a specimen
3 for chemical testing pursuant to a search warrant
4 issued in the investigation of a suspected violation
5 of section 707.5 where the following grounds exist:
6 a. A traffic accident has resulted in a death
7 or personal injury reasonably likely to cause death,
8 and
9 b. There are reasonable grounds to believe that
10 one or more of the persons whose driving may have
11 been the proximate cause of the accident was violating
12 section 321.281 at the time of the accident.
13 2. Search warrants may be issued under this section
14 in full compliance with chapter 808 or they may be
15 issued under subsection 3 of this section.
16 3. Notwithstanding section 808.3, the issuance
17 of a search warrant under this section may be based
18 upon sworn oral testimony communicated by telephone
19 if the magistrate who is asked to issue the warrant
20 is satisfied that the circumstances make it reasonable
21 to dispense with a written affidavit. The following
22 shall then apply:
23 a. When a caller applies for the issuance of a
24 warrant under this section and the magistrate becomes
25 aware of the purpose of the call, the magistrate shall
26 place under oath the person applying for the warrant.
27 b. The person applying for the warrant shall
28 prepare a duplicate warrant and read the duplicate
29 warrant, verbatim, to the magistrate who shall enter,
30 verbatim, what is read to the magistrate on a form
31 that will be considered the original warrant. The
32 magistrate may direct that the warrant be modified.
33 c. The oral application testimony shall set forth
34 facts and information tending to establish the
35 existence of the grounds for the warrant and shall
36 describe with a reasonable degree of specificity the
37 person or person from whom a specimen is to be
38 withdrawn and the location where the withdrawal of
39 the specimen or specimens is to take place.
40 d. If a voice recording device is available, the
41 magistrate may record by means of that device all
42 of the call after the magistrate becomes aware of
43 the purpose of the call. Otherwise, the magistrate
44 shall cause a stenographic or longhand memorandum
45 to be made of the oral testimony of the person applying
46 for the warrant.
47 e. If the magistrate is satisfied from the oral
48 testimony that the grounds for the warrant exists
49 or that there is probable cause to believe that they
50 exist, the magistrate shall order the issuance of

1 the warrant by directing the person applying for the
2 warrant to sign the magistrate's name on the duplicate
3 warrant. The magistrate shall immediately sign the
4 original warrant and enter on its face the exact time
5 when the issuance was ordered.

6 f. The person who executes the warrant shall enter
7 the time of execution on the face of the duplicate
8 warrant.

9 g. The magistrate shall cause any record of the
10 call made by means of a voice recording device to
11 be transcribed, shall certify the accuracy of the
12 transcript, and shall file the transcript and the
13 original record with the clerk. If a stenographic
14 or longhand memorandum was made of the oral testimony
15 of the person who applied for the warrant, the
16 magistrate shall file a signed copy with the clerk.

17 h. The clerk of court shall maintain the original
18 and duplicate warrants along with the record of the
19 telephone call and any transcript or memorandum made
20 of the call in a confidential file until a charge,
21 if any, is filed.

22 4. Search warrants issued under this section shall
23 authorize and direct peace officers to secure the
24 withdrawal of blood specimens by medical personnel
25 under section 321B.4. Reasonable care shall be
26 exercised to ensure the health and safety of the
27 persons from whom specimens are withdrawn in execution
28 of the warrants. If a person from whom a specimen
29 is to be withdrawn objects to the withdrawal of blood,
30 the person is capable of giving a specimen of breath,
31 and a direct breath testing instrument is readily
32 available, the warrant may be executed by the
33 withdrawal of a specimen of breath for chemical
34 testing.

35 5. The act of any person knowingly resisting or
36 obstructing the withdrawal of a specimen pursuant
37 to a search warrant issued under this section
38 constitutes a contempt punishable by a fine not
39 exceeding one thousand dollars or imprisonment in
40 a county jail not exceeding one year or by both such
41 fine and imprisonment. Also, if the withdrawal of
42 a specimen is so resisted or obstructed, sections
43 321B.7 and 321B.11 apply.

44 6. Nonsubstantive variances between the contents
45 of the original and duplicate warrants shall not cause
46 a warrant issued under subsection 3 of this section
47 to be considered invalid.

48 7. Specimens obtained pursuant to warrants issued
49 under this section are not subject to disposition
50 under section 808.9 or chapter 809.

S-5732

PAGE 4

- 1 8. Subsections 1 through 7 of this section do
2 not apply where a test may be administered under
3 section 321B.5.
- 4 9. Medical personnel who use reasonable care and
5 accepted medical practices in withdrawing blood
6 specimens are immune from liability for their actions
7 in complying with requests made of them pursuant to
8 search warrants or pursuant to section 321B.4."
- 9 5. Page 5, by striking lines 14 through 18 and
10 inserting in lieu thereof the following:
11 "34. Page 12, by striking lines 12 through 17
12 and inserting in lieu thereof the following:
13 "nonresident operating privilege for a period of not
14 ~~less than one hundred twenty days nor more than one~~
15 year equal to one hundred fifty percent of the length
16 of time the person's license would have been revoked
17 under section 12 of this Act if the person had
18 submitted to chemical testing and the test results
19 had shown ten hundredths or more of one percent by
20 weight of alcohol in the blood; or if the person is
21 a resident without a license or permit to operate
22 a motor vehicle in this state, the director department
23 shall deny to the person the issuance of a license
24 or permit for the same period a license or permit
25 would be revoked within one year from the date of
26 the alleged".
- 27 6. Page 5, by striking lines 22 and 23.
- 28 7. Page 5, by striking lines 28 and 29.

S-5732 FILED

RECEIVED FROM THE HOUSE

APRIL 22, 1982

Senate referred to Committee 4/23 (p. 1384)
House inserted 4/23 (p. 1701)

REPORT OF THE FIRST CONFERENCE
COMMITTEE ON HOUSE FILE 2369

To the President of the Senate and the Speaker of the House.

We, the undersigned members of the conference committee appointed to consider the differences between the House of Representatives and the Senate on House File 2369 a bill for an Act relating to crimes resulting from the operation of motor vehicles under certain circumstances, including while the operator's driver's license is suspended and while under the influence of an alcoholic beverage or drug or with a certain amount of alcohol in the blood and the provisions for chemical testing, sentencing, penalties and license revocation relating to that offense and making it effective upon publication respectfully make the following report:

1. That the House recede from its amendment S-5732 to the Senate amendment H-5884 to House File 2369 as amended, passed and reprinted by the House.

2. That the Senate amendment H-5884 to House File 2369 as amended, passed and reprinted by the House be amended as follows:

1. Page 1, by striking lines 17 through 20 and inserting in lieu thereof the following:

"6. Page 2, line 35, by inserting after the word "arrest." the words "The court may accommodate the sentence to the work schedule of the defendant.""

2. Page 2, by striking lines 3 through 12 and inserting in lieu thereof the following:

"14. Page 4, line 2, by inserting after the word "judgment." the words and figure "A person whose license to operate a motor vehicle is revoked pursuant to this subsection

may be issued a temporary restricted driving permit by the department allowing the person to drive to and from the person's home and place of employment and in the person's employment and to attend evaluation, treatment or educational services for alcohol or drug dependency, if the person's license to operate a motor vehicle is not subject to revocation under section 321B.7 for refusal to submit to chemical testing.""

3. Page 2, by striking lines 27 through 44 and inserting in lieu thereof the following:

"9. a. Upon a plea or verdict of guilty of a third or subsequent violation of this section, the court in which the plea was entered or the verdict was returned shall order that the defendant's license or permit to operate motor vehicles be revoked by the department and that the defendant shall remain ineligible for a new license or permit for a period of six years. Any license or permit to operate motor vehicles held by the defendant shall be surrendered to the court who shall forward it to the department with a copy of the order for revocation.

b. After two years from the date of the order for revocation, the defendant may apply to the court for restoration of the defendant's eligibility for a license or permit to operate motor vehicles. The application may be granted only if all of the following are shown by the defendant by a preponderance of the evidence:

(1) The defendant has completed an evaluation and, if recommended by the evaluation, a program of treatment for chemical dependency and is recovering, or has substantially recovered, from that dependency or tendency to abuse alcohol or drugs.

(2) The defendant has not been convicted, since the date of the revocation order, of any subsequent violations of this

section or section 123.46, or any comparable city or county ordinance, and the defendant has not, since the date of the revocation order, submitted to a chemical test under chapter 321B that indicated ten hundredths or more of one percent by weight of alcohol in the person's blood or refused to submit to chemical testing under that chapter.

(3) The defendant has abstained from the excessive consumption of alcoholic beverages and the consumption of controlled substances, except at the direction of a licensed physician or pursuant to a valid prescription.

(4) The defendant's license or permit is not currently subject to suspension or revocation for any other reason.

c. The court shall forward to the department a record of any application submitted under paragraph b and the results of the court's disposition of the application."

4. Page 3, by striking lines 9 through 37 and inserting in lieu thereof the following:

"23. Page 6, by striking lines 8 and 9 and inserting in lieu thereof the following:

"Sec. 8. Section 321.283, subsection 6, Code 1981, is amended to read as follows:

6. Temporary permit. Any person required to attend a course evaluation, treatment or rehabilitation services by the provisions of this division, who is subject to a drivers license suspension or revocation, may be issued a temporary driving permit by the department restricted to driving to and from his the person's home, place of employment, in his the person's employment and the location of the required course evaluation, treatment or rehabilitation services.

Any person who does not receive a temporary driving permit may after the period of license suspension or revocation under for a violation of section 321.281 have his or her drivers license reissued subject to suspension for failure to comply

with the provisions of this division. This section shall not permit the issuance of a temporary driving permit or reissuance of a drivers license where the provisions of chapter 321A have not been complied with.

Successful completion of a course or evaluation, treatment or rehabilitation services required by this division shall not reverse a drivers license suspension or revocation or reduce the length of a suspension or revocation under for a violation of section 321.281, ~~however, the director may reduce the length of a suspension or revocation contingent upon successful completion of a course for drinking drivers or under chapter 321B.~~

5. Page 4, by striking line 27 through page 5, line 7, and inserting in lieu thereof the following:

"NEW SECTION. TESTS PURSUANT TO WARRANTS.

1. Refusal to consent to a test under section 321B.3 does not prohibit the withdrawal of a specimen for chemical testing pursuant to a search warrant issued in the investigation of a suspected violation of section 707.5 where the following grounds exist:

a. A traffic accident has resulted in a death or personal injury reasonably likely to cause death, and

b. There are reasonable grounds to believe that one or more of the persons whose driving may have been the proximate cause of the accident was violating section 321.281 at the time of the accident.

2. Search warrants may be issued under this section in full compliance with chapter 808 or they may be issued under subsection 3 of this section.

3. Notwithstanding section 808.3, the issuance of a search warrant under this section may be based upon sworn oral testimony communicated by telephone if the magistrate who is asked to issue the warrant is satisfied that the

circumstances make it reasonable to dispense with a written affidavit. The following shall then apply:

a. When a caller applies for the issuance of a warrant under this section and the magistrate becomes aware of the purpose of the call, the magistrate shall place under oath the person applying for the warrant.

b. The person applying for the warrant shall prepare a duplicate warrant and read the duplicate warrant, verbatim, to the magistrate who shall enter, verbatim, what is read to the magistrate on a form that will be considered the original warrant. The magistrate may direct that the warrant be modified.

c. The oral application testimony shall set forth facts and information tending to establish the existence of the grounds for the warrant and shall describe with a reasonable degree of specificity the person or persons whose driving is believed to have been the proximate cause of the accident and from whom a specimen is to be withdrawn and the location where the withdrawal of the specimen or specimens is to take place.

d. If a voice recording device is available, the magistrate may record by means of that device all of the call after the magistrate becomes aware of the purpose of the call. Otherwise, the magistrate shall cause a stenographic or longhand memorandum to be made of the oral testimony of the person applying for the warrant.

e. If the magistrate is satisfied from the oral testimony that the grounds for the warrant exists or that there is probable cause to believe that they exist, the magistrate shall order the issuance of the warrant by directing the person applying for the warrant to sign the magistrate's name on the duplicate warrant. The magistrate shall immediately sign the original warrant and enter on its face the exact

time when the issuance was ordered.

f. The person who executes the warrant shall enter the time of execution on the face of the duplicate warrant.

g. The magistrate shall cause any record of the call made by means of a voice recording device to be transcribed, shall certify the accuracy of the transcript, and shall file the transcript and the original record with the clerk. If a stenographic or longhand memorandum was made of the oral testimony of the person who applied for the warrant, the magistrate shall file a signed copy with the clerk.

h. The clerk of court shall maintain the original and duplicate warrants along with the record of the telephone call and any transcript or memorandum made of the call in a confidential file until a charge, if any, is filed.

4. Search warrants issued under this section shall authorize and direct peace officers to secure the withdrawal of blood specimens by medical personnel under section 321B.4. Reasonable care shall be exercised to ensure the health and safety of the persons from whom specimens are withdrawn in execution of the warrants. If a person from whom a specimen is to be withdrawn objects to the withdrawal of blood, the person is capable of giving a specimen of breath, and a direct breath testing instrument is readily available, the warrant may be executed by the withdrawal of a specimen of breath for chemical testing.

5. The act of any person knowingly resisting or obstructing the withdrawal of a specimen pursuant to a search warrant issued under this section constitutes a contempt punishable by a fine not exceeding one thousand dollars or imprisonment in a county jail not exceeding one year or by both such fine and imprisonment. Also, if the withdrawal of a specimen is so resisted or obstructed, sections 321B.7 and 321B.11 apply.

6. Nonsubstantive variances between the contents of the

original and duplicate warrants shall not cause a warrant issued under subsection 3 of this section to be considered invalid.

7. Specimens obtained pursuant to warrants issued under this section are not subject to disposition under section 808.9 or chapter 809.

8. Subsections 1 through 7 of this section do not apply where a test may be administered under section 321B.5.

9. Medical personnel who use reasonable care and accepted medical practices in withdrawing blood specimens are immune from liability for their actions in complying with requests made of them pursuant to search warrants or pursuant to section 321B.4."

6. Page 5, by striking lines 14 through 18 and inserting in lieu thereof the following:

"34. Page 12, by striking lines 12 through 17 and inserting in lieu thereof the following: "nonresident operating privilege for a period of not-less-than one hundred twenty eighty days not-more-than-one-year if the person has no previous revocation under section 321.209, subsection 2, section 321.281, or chapter 321B; one year if the person has one previous revocation under those provisions; and five hundred forty days if the person has two or more previous revocations under those provisions; or if the person is a resident without a license or permit to operate a motor vehicle in this state, the ~~director~~ department shall deny to the person the issuance of a license or permit for the same period a license or permit would be revoked within-one-year-from the-date-of-the-alleged".

7. Page 5, by striking lines 22 and 23.

8. Page 5, by striking lines 28 and 29 and inserting in lieu thereof the following:

"39. Page 15, line 9, by inserting after the words "accept

guilty pleas" the words "if the defendant is represented by legal counsel"."

9. Page 5, by inserting after line 42 the following:

"42. Amend the title, lines 7 and 8, by striking the words "and making it effective upon publication"."

10. By renumbering and correcting internal references to conform with this amendment.

ON THE PART OF THE SENATE:

A. R. (BUD) KUDART, Chair
BOB CARR
LUCAS J. DEKOSTER
MICK LURA
ARTHUR A. SMALL, JR.

ON THE PART OF THE HOUSE:

DOUGLAS RITSEMA, Chair
BETTY JEAN CLARK
VIRGIL E. COREY
DANIEL JAY
JOSEPH J. WELSH

FILED APRIL 24, 1982
CONFERENCE COMMITTEE REPORT ADOPTED

House adopted 4/24 (p. 1809)

Senate adopted 4/24 (p. 1469)

HOUSE FILE 2369

AN ACT

RELATING TO CRIMES RESULTING FROM THE OPERATION OF MOTOR VEHICLES UNDER CERTAIN CIRCUMSTANCES, INCLUDING WHILE THE OPERATOR'S DRIVERS LICENSE IS SUSPENDED AND WHILE UNDER THE INFLUENCE OF AN ALCOHOLIC BEVERAGE OR DRUG OR WITH A CERTAIN AMOUNT OF ALCOHOL IN THE BLOOD AND THE PROVISIONS FOR CHEMICAL TESTING, SENTENCING, PENALTIES AND LICENSE REVOCATION RELATING TO THAT OFFENSE.

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

Section 1. Section 321.191, unnumbered paragraph 2, Code 1981, is amended to read as follows:

There shall be a fee of twenty dollars for reinstatement of a chauffeur's license or operator's license which is, after notice and opportunity for hearing, suspended or revoked pursuant to sections 321.209, and 321.210, except subsection 4 thereof, and ~~321B-7~~ chapter 321B. Such twenty-dollar fee shall be collected only if the person whose license was suspended or revoked was served personally with notice thereof. If the person whose license was suspended or revoked was served notice thereof by ~~registered~~ certified mail, the reinstatement fee shall be ten dollars.

Sec. 2. Section 321.209, subsection 2, Code 1981, is amended by striking the subsection and inserting in lieu thereof the following:

2. Operating a motor vehicle in violation of section 321.281 by a person whose driver's license has not been revoked under chapter 321B for the occurrence from which the arrest arose.

Sec. 3. Section 321.212, unnumbered paragraph 1, Code 1981, is amended to read as follows:

Except as provided in section 321.513 the department shall not suspend a license for a period of more than one year, except that a license suspended because of incompetency to drive a motor vehicle shall be suspended until the department receives satisfactory evidence that the former holder is competent to operate a motor vehicle and a refusal to reinstate shall constitute a denial of license within the provisions of section 321.215; upon revoking a license the department shall not grant an application for a new license until the expiration of one year after the revocation, unless another period is specified by law.

Sec. 4. Section 321.218, unnumbered paragraph 1, Code 1981, is amended to read as follows:

Any ~~A~~ person whose operator's or chauffeur's license or driving privilege, has been denied, canceled, suspended or revoked as provided in this chapter, and who drives any motor vehicle upon the highways of this state while ~~such the~~ license or privilege is denied, canceled, suspended, or revoked, is guilty of a ~~simple serious~~ simple serious misdemeanor. The sentence imposed under this section shall not be suspended by the court, notwithstanding ~~the provisions of~~ section 907.3 or any other ~~provision of~~ statute. The department, upon receiving the record of the conviction of ~~any a~~ person under this section upon a charge of driving a motor vehicle while the license of ~~such the~~ person was suspended or revoked, shall, except for licenses suspended under section 321.513, extend the period of suspension or revocation for an additional like period, and the department shall not issue a new license during ~~such the~~ additional period.

Sec. 5. Section 321.281, Code 1981, as amended by Acts of the Sixty-ninth General Assembly, 1981 Session, chapter 103, section 6, is amended by striking the section and inserting in lieu thereof the following:

321.281 OPERATING WHILE INTOXICATED OR DRUGGED--COPY OF JUDGMENT TO DEPARTMENT--COMMITMENT OF DEFENDANT FOR EVALUATION AND TREATMENT.

1. A person shall not operate a motor vehicle upon the public highways of this state in either of the following conditions:

a. While under the influence of an alcoholic beverage, a narcotic, hypnotic, or other drug, or any combination of such substances.

b. While having thirteen hundredths or more of one percent by weight of alcohol in the blood.

2. A person convicted of a violation of this section, upon conviction or a plea of guilty, is guilty of:

a. A serious misdemeanor for the first offense and shall be imprisoned in the county jail for not less than forty-eight hours, less credit for any time the person was confined in a jail or detention facility following arrest. The court may accommodate the sentence to the work schedule of the defendant.

b. An aggravated misdemeanor for a second offense and shall be imprisoned in the county jail or community-based correctional facility not less than seven days, which minimum term cannot be suspended notwithstanding section 901.5, subsection 3 and section 907.3, subsection 2.

c. A class "D" felony for a third offense and each subsequent offense.

No conviction for, or plea of guilty to, a violation of this section which occurred more than six years prior to the date of the violation charged shall be considered in determining that the violation charged is a second, third or subsequent offense.

3. A person shall not be convicted and sentenced for violations of both paragraphs a and b of subsection 1 if the offenses were committed in the same occurrence.

4. As a condition of a suspended sentence or portion of sentence for a second, third or subsequent offense in violation of this section, the court upon hearing may commit the defendant for inpatient treatment of alcoholism or drug addiction or dependency to any hospital, institution or community correctional facility in Iowa providing such treatment. The time for which the defendant is committed for treatment shall be credited against the defendant's sentence. The court may prescribe the length of time for the evaluation and treatment or it may request that the hospital to which the person is committed immediately report to the court when the person has received maximum benefit from the program of the hospital or institution or has recovered from the person's addiction, dependency, or tendency to chronically abuse alcohol or drugs. A person committed under this section who does not possess sufficient income or estate to make payment of the costs of the treatment in whole or in part shall be considered a state patient and the costs of treatment shall be paid as provided in section 125.44.

5. The clerk of court shall immediately certify to the department a true copy of the judgment sentencing the defendant under this section.

6. If the court defers judgment pursuant to section 907.3 for an offense under this section, the court shall order that the defendant's license to operate a motor vehicle be revoked for a period of not less than thirty days nor more than ninety days, during which time no new license to operate a motor vehicle shall be issued to the defendant. The court shall immediately require the defendant to surrender to it all operator's or chauffer's licenses held by the defendant which the court shall forward to the department with a copy of the order deferring judgment. A person whose license to operate a motor vehicle is revoked pursuant to this subsection may

be issued a temporary restricted driving permit by the department allowing the person to drive to and from the person's home and place of employment and in the person's employment and to attend evaluation, treatment or educational services for alcohol or drug dependency, if the person's license to operate a motor vehicle is not subject to revocation under section 321B.7 for refusal to submit to chemical testing.

7. This section does not apply to a person operating a motor vehicle while under the influence of a narcotic, hypnotic, or other drug if such substances were prescribed for the person and were taken under the prescription and in accordance with the directions of a medical practitioner as defined in section 155.3, subsection 1i, if there is no evidence of the consumption of alcohol and the medical practitioner had not directed the person to refrain from operating a motor vehicle.

8. In any prosecution under this section, evidence of the results of analysis of a specimen of the defendant's blood, breath, saliva, or urine is admissible upon proof of a proper foundation. In an action in which a violation of subsection 1, paragraph a of this section is alleged, evidence that there was, at the time, ten hundredths or more of one percent by weight of alcohol in the defendant's blood is presumptive evidence that the defendant was under the influence of an alcoholic beverage.

9. a. Upon a plea or verdict of guilty of a third or subsequent violation of this section, the court in which the plea was entered or the verdict was returned shall order that the defendant's license or permit to operate motor vehicles be revoked by the department and that the defendant shall remain ineligible for a new license or permit for a period of six years. Any license or permit to operate motor vehicles held by the defendant shall be surrendered to the court who shall forward it to the department with a copy of the order for revocation.

b. After two years from the date of the order for revocation, the defendant may apply to the court for restoration of the defendant's eligibility for a license or permit to operate motor vehicles. The application may be granted only if all of the following are shown by the defendant by a preponderance of the evidence:

(1) The defendant has completed an evaluation and, if recommended by the evaluation, a program of treatment for chemical dependency and is recovering, or has substantially recovered, from that dependency on or tendency to abuse alcohol or drugs.

(2) The defendant has not been convicted, since the date of the revocation order, of any subsequent violations of this section or section 123.46, or any comparable city or county ordinance, and the defendant has not, since the date of the revocation order, submitted to a chemical test under chapter 321B that indicated ten hundredths or more of one percent by weight of alcohol in the person's blood or refused to submit to chemical testing under that chapter.

(3) The defendant has abstained from the excessive consumption of alcoholic beverages and the consumption of controlled substances, except at the direction of a licensed physician or pursuant to a valid prescription.

(4) The defendant's license or permit is not currently subject to suspension or revocation for any other reason.

c. The court shall forward to the department a record of any application submitted under paragraph b and the results of the court's disposition of the application.

Sec. 6. Section 321.282, Code 1981, is amended to read as follows:

321.282 VIOLATIONS. ~~if any A person who whose license or privilege to operate is revoked or denied because the person has been convicted or has pleaded guilty to driving or operating a motor vehicle upon the public highway of this state while in an intoxicated condition a violation of section 321.281 or is revoked under subsection 6 of that section who~~

is found driving or operating any motor vehicle ~~in violation of the provisions of sections 321.174 and 321.209 the person shall be upon a highway in this state while the license or privilege is revoked or denied is guilty of a simple serious misdemeanor.~~

Sec. 7. Section 321.283, subsections 2, 3, and 4, Code 1981, are amended to read as follows:

2. COURT ORDER. ~~After the a conviction of a person for, or a plea of guilty of, operating a motor vehicle while under the influence of an alcoholic beverage a violation of section 321.281,~~ the court in addition to its power to commit the defendant for treatment of alcoholism under section 321.281, may in lieu of, or prior to or after the imposition of punishment for a first offense or prior to or after the imposition of punishment for any subsequent offense, order the defendant, at ~~his~~ the defendant's own expense, to enroll in, attend and successfully complete a course for drinking drivers. The court may alternatively or additionally require the defendant to seek evaluation, treatment or rehabilitation services under section 125.33 at the defendant's expense and to furnish evidence of successful completion. A copy of the order shall be forwarded to the department.

3. REFERRED ON CONVICTION. After any a conviction for ~~operating a motor vehicle while under the influence of an alcoholic beverage under a violation of section 321.281,~~ the court may refer the defendant for treatment at a facility as defined in sections 125.1 to 125.43 and designated by the Iowa department of substance abuse. The court may prescribe the length of time for treatment or it may be left to the discretion of the facility to which the defendant was referred. A person referred under this section who ~~is~~ does not possess sufficient income or estate to enable ~~him or her~~ the person to make payment of the costs of such treatment in whole or in part is a state patient, and costs for treatment shall be paid as provided in section 125.44.

4. LICENSE REVOKED. When the court orders a person to enroll, attend and successfully complete a course for drinking drivers or complete evaluation, treatment or rehabilitation services and the person's drivers license is not revoked or suspended at the time of the order, the court shall also order ~~that the revocation of the person's drivers license shall be for an indefinite period and~~ until the required course or treatment or rehabilitation services is successfully completed and proof of completion has been filed with the department and the provisions of chapter 321A have been complied with. If the person's drivers license is revoked or suspended at the time of the order, that revocation or suspension shall not end prior to the completion and proof of completion of the required course or evaluation, treatment or rehabilitation services.

Sec. 8. Section 321.283, subsection 6, Code 1981, is amended to read as follows:

6. TEMPORARY PERMIT. Any person required to attend a ~~course~~ evaluation, treatment or rehabilitation services by the provisions of this division, who is subject to a drivers license suspension or revocation, may be issued a temporary driving permit by the department restricted to driving to and from ~~his~~ the person's home, place of employment, in ~~his~~ the person's employment and the location of the required ~~course~~ evaluation, treatment or rehabilitation services. Any person who does not receive a temporary driving permit may after the period of license suspension or revocation under for a violation of section 321.281 have his or her drivers license reissued subject to suspension for failure to comply with the provisions of this division. This section shall not permit the issuance of a temporary driving permit or reissuance of a drivers license where the provisions of chapter 321A have not been complied with.

Successful completion of a course or evaluation, treatment or rehabilitation services required by this division shall not reverse a drivers license suspension or revocation or

reduce the length of a suspension or revocation under for a violation of section 321.281, however, the director may reduce the length of a suspension or revocation contingent upon successful completion of a course for drinking drivers or under chapter 321B.

Sec. 9. Section 321.283, subsection 7, unnumbered paragraph 2, Code 1981, is amended to read as follows:

Enrollment in the courses shall not be limited to persons ordered to enroll, attend and successfully complete the course under ~~the provisions of~~ subsection 2, and any person convicted of ~~operating a motor vehicle while under the influence of an alcoholic beverage~~ a violation of section 321.281 who was not ordered to enroll, ~~shall be allowed to~~ in a course may enroll in and attend a course for drinking drivers.

Sec. 10. Section 321.555, subsection 1, paragraph b, Code 1981, is amended to read as follows:

b. ~~Driving~~ Operating a motor vehicle ~~while under the influence of an alcoholic beverage or a controlled substance as defined in section 204.101~~ in violation of section 321.281.

Sec. 11. Section 321A.17, subsection 1, Code 1981, is amended to read as follows:

1. Whenever the director, under any law of this state, suspends or revokes the license of any person upon receiving record of a conviction or a forfeiture of bail or revokes the license of any person pursuant to chapter 321B, the director shall also suspend the registration for all motor vehicles registered in the name of ~~such~~ the person, except that ~~he~~ the director shall not suspend ~~such~~ the registration, unless otherwise required by law, if ~~such~~ the person has previously given or ~~shall immediately give~~ gives and thereafter ~~maintain~~ maintains proof of financial responsibility with respect to all motor vehicles registered by ~~such~~ the person.

Sec. 12. Chapter 321B, Code 1981, is amended by adding the following new section:

NEW SECTION. PRELIMINARY SCREENING TEST. When a peace officer has reasonable grounds to believe that a motor vehicle

operator may be violating or has violated section 321.281, or 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. The results of this preliminary screening test may be used for the purpose of deciding whether an arrest should be made and 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. Chapter 321B, Code 1981, is amended by adding the following new section:

NEW SECTION. TEST RESULT REVOCATION. Upon certification by the peace officer that there existed reasonable grounds to believe the person to have been operating a motor vehicle in violation of section 321.281 and that the person submitted to chemical testing and the test results indicate ten hundredths or more of one percent by weight of alcohol in the person's blood, the department shall revoke the person's license or permit to drive or nonresident operating privilege for a period of one hundred twenty days if the person has no revocation within the previous six years under section 321.209, subsection 2, section 321.281 or chapter 321B, two hundred forty days if the person has one previous revocation under those provisions, and one year if the person has two or more revocations under those provisions arising from separate occurrences.

The effective date of the revocation shall be twenty 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 a chemical test or directing the administration of a chemical test may serve immediate notice of intention to revoke and of revocation on a person when the person's test results indicate ten hundredths or more of one percent by weight of alcohol in the blood.

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 valid only for twenty days. The peace officer shall immediately send the person's driver's license to the department along with an affidavit stating that the test results indicate ten hundredths of one percent or more by weight of alcohol in the person's blood.

The department may, on application, issue a temporary restricted license to a person whose license has been revoked under this section when the person's regular employment includes the operation of a motor vehicle or who cannot perform his or her regular occupation without the use of a motor vehicle, or when the person's use of a motor vehicle is necessary to attend evaluation, treatment or educational services for alcohol or drug dependency, but the person shall not operate a vehicle for pleasure while holding a restricted license. However, this paragraph does not apply to a person whose license is suspended or revoked for another reason.

Sec. 14. Section 321B.1, Code 1981, is amended to read as follows:

321B.1 DECLARATION OF POLICY. The general assembly hereby ~~determines and declares that the provisions of this chapter are necessary in order to control alcoholic beverages and to aid the enforcement of laws prohibiting operation of a motor vehicle while under the influence of an alcoholic beverage, a narcotic, hypnotic, or other drug or any combination of such substances, or while having a certain amount of alcohol in the blood.~~

Sec. 15. Section 321B.3, Code 1981, is amended to read as follows:

321B.3 IMPLIED CONSENT TO TEST. Any person who operates a motor vehicle in this state upon a public highway, under ~~such~~ circumstances as ~~to~~ which give reasonable grounds to believe the person to have been operating a motor vehicle ~~while under the influence of an alcoholic beverage in violation~~

~~of section 321.281, shall be~~ is deemed to have given consent to the withdrawal ~~from his body~~ of specimens of ~~his the~~ person's blood, breath, saliva, or urine, and to a chemical test or tests ~~thereof, of the specimens~~ for the purpose of determining the alcoholic content of ~~his the~~ blood, subject to ~~the provisions hereinafter set out~~ this section. The withdrawal of ~~such the~~ body substances, and the test or tests ~~thereof,~~ shall be administered at the written request of a peace officer having reasonable grounds to believe the person to have been operating a motor vehicle ~~upon a public highway of this state while under the influence of an alcoholic beverage in violation of section 321.281, and only after the peace officer has placed such person under arrest for the offense of operating a motor vehicle while under the influence of an alcoholic beverage if any of the following conditions exist:~~

1. A peace officer has lawfully placed the person under arrest for violation of section 321.281.
2. The person has been involved in a motor vehicle accident or collision resulting in personal injury or death.
3. The person has refused to take a preliminary breath screening test provided by this chapter.
4. The preliminary breath screening test was administered and it recorded ten hundredths or more of one percent by weight of alcohol in the blood.

PARAGRAPH DIVIDED. The peace officer shall determine which of the four substances, breath, blood, saliva, or urine, shall be tested. Refusal to submit to a chemical test of urine, saliva or breath ~~shall be~~ is deemed a refusal to submit, and ~~the provisions of section 321B.7 shall apply~~ applies. A refusal to submit to a chemical test of blood ~~shall be~~ is not ~~be~~ deemed a refusal to submit, but in that case, the peace officer shall then determine which one of the other three substances shall be tested, and shall offer ~~such~~ the test. If ~~such the~~ peace officer fails to provide a test within two hours after ~~such the preliminary screening test is administered~~

or refused or the arrest is made, whichever occurs first, no a test shall-be is not required, and there shall be no revocation under the-provisions-of section 321B.7.

Sec. 16. Chapter 321B, Code 1981, is amended by adding the following new section:

NEW SECTION. TESTS PURSUANT TO WARRANTS.

1. Refusal to consent to a test under section 321B.3 does not prohibit the withdrawal of a specimen for chemical testing pursuant to a search warrant issued in the investigation of a suspected violation of section 707.5 where the following grounds exist:

- a. A traffic accident has resulted in a death or personal injury reasonably likely to cause death, and
- b. There are reasonable grounds to believe that one or more of the persons whose driving may have been the proximate cause of the accident was violating section 321.281 at the time of the accident.

2. Search warrants may be issued under this section in full compliance with chapter 808 or they may be issued under subsection 3 of this section.

3. Notwithstanding section 808.3, the issuance of a search warrant under this section may be based upon sworn oral testimony communicated by telephone if the magistrate who is asked to issue the warrant is satisfied that the circumstances make it reasonable to dispense with a written affidavit. The following shall then apply:

- a. When a caller applies for the issuance of a warrant under this section and the magistrate becomes aware of the purpose of the call, the magistrate shall place under oath the person applying for the warrant.
- b. The person applying for the warrant shall prepare a duplicate warrant and read the duplicate warrant, verbatim, to the magistrate who shall enter, verbatim, what is read to the magistrate on a form that will be considered the original warrant. The magistrate may direct that the warrant be modified.

c. The oral application testimony shall set forth facts and information tending to establish the existence of the grounds for the warrant and shall describe with a reasonable degree of specificity the person or persons whose driving is believed to have been the proximate cause of the accident and from whom a specimen is to be withdrawn and the location where the withdrawal of the specimen or specimens is to take place.

d. If a voice recording device is available, the magistrate may record by means of that device all of the call after the magistrate becomes aware of the purpose of the call. Otherwise, the magistrate shall cause a stenographic or longhand memorandum to be made of the oral testimony of the person applying for the warrant.

e. If the magistrate is satisfied from the oral testimony that the grounds for the warrant exist or that there is probable cause to believe that they exist, the magistrate shall order the issuance of the warrant by directing the person applying for the warrant to sign the magistrate's name on the duplicate warrant. The magistrate shall immediately sign the original warrant and enter on its face the exact time when the issuance was ordered.

f. The person who executes the warrant shall enter the time of execution on the face of the duplicate warrant.

g. The magistrate shall cause any record of the call made by means of a voice recording device to be transcribed, shall certify the accuracy of the transcript, and shall file the transcript and the original record with the clerk. If a stenographic or longhand memorandum was made of the oral testimony of the person who applied for the warrant, the magistrate shall file a signed copy with the clerk.

h. The clerk of court shall maintain the original and duplicate warrants along with the record of the telephone call and any transcript or memorandum made of the call in a confidential file until a charge, if any, is filed.

4. Search warrants issued under this section shall authorize and direct peace officers to secure the withdrawal of blood specimens by medical personnel under section 321B.4. Reasonable care shall be exercised to ensure the health and safety of the persons from whom specimens are withdrawn in execution of the warrants. If a person from whom a specimen is to be withdrawn objects to the withdrawal of blood, the person is capable of giving a specimen of breath, and a direct breath testing instrument is readily available, the warrant may be executed by the withdrawal of a specimen of breath for chemical testing.

5. The act of any person knowingly resisting or obstructing the withdrawal of a specimen pursuant to a search warrant issued under this section constitutes a contempt punishable by a fine not exceeding one thousand dollars or imprisonment in a county jail not exceeding one year or by both such fine and imprisonment. Also, if the withdrawal of a specimen is so resisted or obstructed, sections 321B.7 and 321B.11 apply.

6. Nonsubstantive variances between the contents of the original and duplicate warrants shall not cause a warrant issued under subsection 3 of this section to be considered invalid.

7. Specimens obtained pursuant to warrants issued under this section are not subject to disposition under section 808.9 or chapter 809.

8. Subsections 1 through 7 of this section do not apply where a test may be administered under section 321B.5.

9. Medical personnel who use reasonable care and accepted medical practices in withdrawing blood specimens are immune from liability for their actions in complying with requests made of them pursuant to search warrants or pursuant to section 321B.4.

Sec. 17. Section 321B.4, Code 1981, is amended to read as follows:

321B.4 TAKING SAMPLE FOR TEST. Only a licensed physician, ~~or a~~ physician's assistant as defined in section 148C.1,

subsection 6, medical technologist or registered nurse ~~designated by a licensed physician as his representative,~~ acting at the written request of a peace officer may withdraw ~~such~~ body substances for the purpose of determining the alcoholic or drug content of the person's blood. However, any peace officer, using devices and methods approved by the commissioner of public safety, may take a specimen of a person's breath or urine for the purpose of determining the alcoholic or drug content of the person's blood. Only new, originally factory wrapped, disposable syringes and needles, kept under strictly sanitary and sterile conditions shall be used for drawing blood. ~~Such~~ The person may have an independent chemical test or tests administered in addition to any administered at the direction of a peace officer. The failure or inability of the person to obtain an independent chemical test or tests ~~shall~~ does not preclude the admission in evidence of the results of the test or tests taken at the direction of the peace officer. Upon the request of the person who is tested, the results of the test or tests taken at the direction of the peace officer shall be made available to ~~him~~ the person.

Sec. 18. Section 321B.5, Code 1981, is amended to read as follows:

321B.5 DEAD OR UNCONSCIOUS PERSONS. Any person who is dead, unconscious or who is otherwise in a condition rendering ~~him~~ the person incapable of consent or refusal ~~shall be~~ is deemed not to have withdrawn the consent provided by section 321B.3, and the test may be given; provided that a licensed physician shall certify in advance of such test that such person is dead, unconscious or otherwise in a condition rendering ~~him~~ that person incapable of consent or refusal. ~~in such case such condition shall obviate the requirements of arrest and advice pursuant to section 321B.6.~~

Sec. 19. Section 321B.6, Code 1981, is amended to read as follows:

321B.6 STATEMENT OF OFFICER. A peace officer shall advise any person who is requested to take any chemical test that a refusal to submit to such test will result in revocation of the person's license or privilege to operate a motor vehicle, ~~provided, however, that this requirement shall~~. A peace officer shall advise a person prior to the submission to a chemical test that if the results indicate ten hundredths or more of one percent by weight of alcohol in the blood the department will revoke the person's license or privilege to operate a motor vehicle. The peace officer shall advise the person of the periods of revocation applying for both reasons for revocation. The requirements of this section do not apply in the case of any person referred to in section 321B.5.

Sec. 20. Section 321B.7, Code 1981, is amended to read as follows:

321B.7 REFUSAL TO SUBMIT. If a person ~~under arrest~~ refuses to submit to the chemical testing, ~~no a test shall not be given, but the director department~~, upon the receipt of a sworn report of the peace officer that ~~he or she the officer~~ had reasonable grounds to believe the arrested person to have been operating a motor vehicle ~~upon a public highway of this state while under the influence of an alcoholic beverage, that he or she had placed such person under arrest for the offense of operating a motor vehicle while under the influence of an alcoholic beverage~~ in violation of section 321.281, ~~that specified conditions existed for chemical testing pursuant to section 321B.3, and that the person had refused to submit to the chemical testing,~~ shall revoke ~~his or her~~ the person's license or permit to drive and any nonresident operating privilege for a period of ~~not less than one hundred twenty eighty days nor more than one year if the person has no previous revocation under section 321.209, subsection 2, section 321.281, or chapter 321B; one year if the person has one previous revocation under those provisions; and five hundred forty days if the person has two or more previous revocations under those provisions; or if the person is a~~

resident without a license or permit to operate a motor vehicle in this state, the ~~director department~~ shall deny to the person the issuance of a license or permit for the same period a license or permit would be revoked within one year from the date of the alleged violation, subject to review as hereinafter provided in this chapter. The effective date of ~~any such~~ revocation shall be twenty days after the ~~director department~~ has mailed notice of such revocation to ~~such the~~ person by ~~registered or 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 days. The peace officer shall immediately send the person's license to the department along with an affidavit indicating the person's refusal to submit to chemical testing.

Sec. 21. Section 321B.8, Code 1981, is amended to read as follows:

321B.8 HEARING. Upon the written request of a person whose privilege to drive has been revoked or denied, or has been issued a twenty-day license pursuant to section 13 of this Act or section 321B.7, the ~~director department~~ shall grant the person an opportunity to be heard within twenty days after the receipt of the request, but the request must be made within ~~thirty ten~~ days of the effective date of revocation or denial of driving privileges or the issuance of a temporary permit. The hearing shall be before the ~~director department~~ in the county wherein ~~where~~ the alleged events occurred ~~for which the person was arrested~~, unless the director and the person agree that the hearing may be held in some other county. The hearing may be recorded and its scope shall cover the issues of whether a peace officer had reasonable grounds to believe the person to have been

operating a motor vehicle ~~upon-a-public-highway-of-this-state while-under-the-influence-of-an-alcoholic-beverage,-whether the-person-was-placed-under-arrest-and~~ in violation of section 321.281, whether he the person refused to submit to the test or tests, the test results if a person consented to a test and whether the person should be issued a temporary restricted license. The director department shall order that the revocation or denial be either rescinded or sustained.

Sec. 22. Section 321B.9, Code 1981, is amended to read as follows:

321B.9 JUDICIAL REVIEW. Judicial review of ~~the-actions~~ an action of the director department may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, ~~petitions~~ a petition for judicial review may be filed in the district court in the county wherein the alleged events occurred for which the licensee was arrested or in the county in which the administrative hearing was held.

Sec. 23. Section 321B.10, Code 1981, is amended to read as follows:

321B.10 EVIDENCE IN ANY ACTION. Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while operating a motor vehicle ~~upon-a-public-highway-of-this-state-while under-the-influence-of-an-alcoholic-beverage~~ in violation of section 321.281, evidence of the amount of alcohol or drugs in the person's blood at the time of the act alleged as shown by a chemical analysis of ~~his~~ the person's blood, breath, saliva or urine is admissible.

Sec. 24. Section 321B.11, Code 1981, is amended to read as follows:

321B.11 PROOF OF REFUSAL ADMISSIBLE. If the person under arrest refuses to submit to the test or tests, proof of refusal shall-be 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 ~~upon-a-public~~

~~highway-of-this-state-while-under-the-influence-of-an-alcoholic beverage~~ in violation of section 321.281.

Sec. 25. Section 321B.15, Code 1981, is amended to read as follows:

321B.15 DRIVING WHILE LICENSE DENIED OR REVOKED. Any person whose license, or driving privilege, has been denied or revoked as provided in this chapter, and who drives any motor vehicle upon the highways of this state while ~~such~~ the license or privilege is denied or revoked, is guilty of a ~~simple~~ serious misdemeanor ~~and-upon-conviction-shall-be punished-as-provided-for-simple-misdemeanors-in-section 321.402~~. The department, upon receiving the record of the conviction of any person under this section upon a charge of driving a motor vehicle while the license of ~~such~~ the person was revoked or denied, shall extend the period of revocation or denial for an additional like period, and the department shall not issue a new license during ~~such~~ the additional period.

Sec. 26. Section 602.60, unnumbered paragraph 1, Code 1981, is amended to read as follows:

Judicial magistrates ~~shall~~ have jurisdiction of simple misdemeanors, including traffic and ordinance violations, preliminary hearings, search warrant proceedings, and small claims. They ~~shall~~ also have jurisdiction to exercise the powers specified in sections 644.2 and 644.12 and the power to hear complaints, or preliminary informations, issue warrants, order arrests, make commitments and take bail. They also have jurisdiction of first offense violations of section 321.281 but only to the extent that they may approve trial informations, conduct arraignments, accept guilty pleas if the defendant is represented by legal counsel, sentence those pleading guilty and make appropriate orders authorized by section 321.283. They ~~shall-have-power-to~~ may act any place within the judicial district as directed, and venue shall be the same as in other district court proceedings.

Sec. 27. Section 602.62, Code 1981, is amended to read as follows:

602.62 PROCEDURE. The criminal procedure before judicial magistrates shall be as provided in chapters 804, 806, 808, 811, 820 and 821 and in R.Cr.P. 2, 5, 7, 8 and 32 to 46. The civil procedure before judicial magistrates shall be as provided in chapters 631 and 648.

Sec. 28. Section 907.3, subsection 1, unnumbered paragraph 2, Code 1981, is amended by adding the following new lettered subparagraph:

NEW LETTERED SUBPARAGRAPH. The offense is a violation of section 321.281 and, within the previous six years, the person has been convicted of a violation of that section or the person's driver's license has been revoked pursuant to that section or chapter 321B.

DELWYN STROMER
Speaker of the House

TERRY E. BRANSTAD
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2369, Sixty-ninth General Assembly.

ELIZABETH A. ISAACSON
Chief Clerk of the House

Approved May 11, 1982

ROBERT D. RAY
Governor