

Reprinted 3/13

MAR 6 1984

HOUSE FILE 2472

BY COMMITTEE ON STATE GOVERNMENT

Place On Calendar

(Formerly Study Bill 766)

Passed House, Date 3-9-84 (A. 896) Passed Senate, Date 3-29-84 (P. 1155)
Vote: Ayes 89 Nays 4 Vote: Ayes 46 Nays 2
Approved 5-14-84

A BILL FOR

558° 1 An Act relating to the transportation of open containers of
2 alcoholic beverages and beer, the hours of sale of
3 alcoholic beverages and beer, the jurisdiction of
4 juvenile court over minors violating the provisions
5 of chapter 123, and providing penalties.

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

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HI 2472

5506 >

1 Section 1. Section 123.28, Code 1983, is amended to read
2 as follows:

3 123.28 TRANSPORTATION PERMITTED. It ~~shall-be~~ is lawful
4 to transport, carry, or convey alcoholic liquors from the
5 place of purchase by the department to any a state warehouse,
6 store, or depot established by the department or from one
7 such place to another and, when so permitted by this chapter,
8 it ~~shall-be~~ is lawful for any a common carrier or other person
9 to transport, carry, or convey alcoholic liquor sold by a
10 vendor from a state warehouse, store, depot or point of
11 purchase by the state to any place to which ~~such~~ the liquor
12 may be lawfully delivered under this chapter. Notwithstanding
13 section 321.230, sections 321.225 and 321.226 do not apply
14 to department employees in the regular course of their
15 employment. A common carrier or other person shall not break
16 or open or allow to be broken or opened any a container or
17 package containing alcoholic liquor or use or drink or allow
18 to be used or drunk any alcoholic liquor while it is being
19 transported or conveyed, but this section ~~shall~~ does not
20 prohibit a private person from transporting individual bottles
21 or containers of alcoholic liquor exempted pursuant to section
22 123.22 and individual bottles or containers bearing the
23 identifying mark prescribed in section 123.26 which have been
24 opened previous to the commencement of ~~such~~ the transportation,
25 and which are transported in a portion of the motor vehicle
26 that is not accessible to the driver when the vehicle is
27 moving. This section ~~shall~~ does not affect the right of any
28 a special permit or liquor control license holder to purchase,
29 possess, or transport alcoholic liquors subject to the
30 provisions of this chapter.

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

1 highway. Evidence that an open or unsealed receptacle con-
 2 taining an alcoholic beverage or beer was found in the glove
 3 compartment, utility compartment, console, front passenger
 4 seat, or any unlocked portable device and within the immediate
 5 reach of the driver while the motor vehicle is upon a public
 6 street or highway is evidence from which the court or jury
 7 may infer that the driver intended to consume the alcoholic
 8 beverage or beer while upon the public street or highway.
 9 However, an open or unsealed receptacle containing an alcoholic
 10 beverage or beer may be transported at any time in the trunk
 11 of the motor vehicle or in some other area of the interior
 12 of the motor vehicle not designed or intended to be occupied
 13 by the driver or not readily accessible to the driver while
 14 the motor vehicle is in motion.

15 Sec. 2. Section 123.47, Code 1983, is amended to read
 16 as follows:

5505 17 123.47 PERSONS UNDER LEGAL AGE.

18 1. No A person shall not sell, give, or otherwise supply
 19 alcoholic liquor or beer to any a person ~~knowing-or-having~~
 20 ~~reasonable-cause-to-believe-him-to-be~~ under legal age, and
 21 ~~no~~ a person ~~or-persons~~ under legal age shall ~~individually~~
 22 ~~or-jointly~~ not have alcoholic liquor or beer in ~~his-or-their~~
 23 the person's possession or control; except in the case of
 24 liquor or beer given or dispensed to a person under legal
 25 age within a private home and ~~with-the-knowledge-and-consent~~
 26 in the presence of the parent or guardian for beverage or
 27 medicinal purposes or as administered to ~~him~~ the person by
 28 either a physician or dentist for medicinal purposes and
 29 except to the extent that a person under legal age may handle
 30 alcoholic beverages and beer during the regular course of
 31 ~~his-or-her~~ employment by a liquor control licensee or beer
 32 permittee under this chapter.

5507 33 Sec. 3. Section 123.49, subsection 2, paragraph b, Code
 34 1983, is amended to read as follows:

54 5507 35 b. Sell or dispense any alcoholic beverage or beer on

1 the premises covered by the license or permit, or permit the
 2 its consumption thereon on the premises between the hours
 3 of two a.m. and six a.m. on any a weekday, and between the
 4 hours of two a.m. on Sunday and six a.m. on the following
 5 Monday, or sell or dispense beer for consumption off the
 6 licensed premises between the hours of twelve midnight and
 7 six a.m. the next morning on a weekday and between the hours
 8 of twelve midnight on Saturday night and six a.m. the following
 9 Monday, however, a holder of a liquor control license or
 10 retail beer permit granted the privilege of selling alcoholic
 556211 liquor or beer on Sunday may sell or dispense ~~such-liquor~~
 12 ~~or-beer~~ it between the hours of ~~noon~~ ten a.m. and ~~ten-p.m.~~
 13 twelve midnight on Sunday.

5475 14 Sec. 4. Section 123.50, Code 1983, is amended by adding
 15 the following new subsections:

5521 16 NEW SUBSECTION. 4. If a licensee or permittee or an em-
 17 ployee of a licensee or permittee is convicted of a violation
 18 of section 123.49, subsection 2, paragraph "h", in addition
 19 to the other penalties fixed for such a violation by this
 20 section, the licensee or permittee shall be assessed a fine
 21 of not less than five hundred dollars nor more than one
 22 thousand dollars.

23 NEW SUBSECTION. 5. A person, other than a licensee or
 24 permittee or a minor, who violates section 123.47 is guilty
 5536 25 of a serious misdemeanor.

26 Sec. 5. Section 232.8, subsection 1, unnumbered para-
 27 graph 2, Code 1983, is amended to read as follows:

5508 28 Violations by a child of provisions of chapter 106, 106A,
 29 109, 109A, 110, 110A, 110B, 111, 321, or 321G which would
 30 be simple misdemeanors if committed by an adult, and violations
 31 of county or municipal curfew or traffic ordinances, and
 32 ~~violations-by-a-child-of-the-provisions-of-section-123-47,~~
 33 are excluded from the jurisdiction of the juvenile court and
 34 shall be prosecuted as simple misdemeanors as provided by
 35 law. ~~The-court-may-advise-appropriate-juvenile-authorities~~

1 ~~and-may-refer-violations-of-section-123.47-to-the-juvenile~~
2 ~~court-when-there-is-reason-to-believe-that-the-child-regularly~~
3 ~~abuses-alcohol-and-may-be-in-need-of-treatment.~~

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4 Sec. 6. Section 233.1, Code 1983, is amended by adding
5 the following new subsection:

6 NEW SUBSECTION. 6. To sell, give, or otherwise supply
7 alcoholic liquor or beer to any person, knowing or having
8 reasonable cause to believe the person to be under legal age
9 as defined in chapter 123.

5589, 5533
5521, 54497

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EXPLANATION

11 The bill makes illegal the transportation of an opened
12 package containing any amount of alcoholic liquor or beer
13 in a portion of a motor vehicle accessible to the driver while
14 the motor vehicle is moving. The bill changes the late hours
15 for which beer may be sold for consumption off licensed
16 premises on weekdays and Saturday from two a.m. to twelve
17 o'clock midnight and extends Sunday sales hours to from ten
18 a.m. to twelve o'clock midnight. The bill also changes the
19 exemption for providing alcoholic liquor or beer to minors
20 in a private home to require that it be done in the presence
21 of the parent or guardian.

22 The bill prescribes new fines for a licensee or permittee
23 who sells, gives, or otherwise supplies alcoholic liquor or
24 beer to a minor. The fines may be levied in addition to a
25 period of suspension of the person's license or permit by
26 the beer and liquor control department.

27 The bill provides that minors arrested or convicted for
28 possession of or the attempt to possess alcoholic liquor or
29 beer shall be under the jurisdiction of the juvenile court.
30 The bill also provides that those providing alcoholic liquor
31 or beer to a person under legal age are in violation of section
32 233.1 for contributing to the delinquency of a minor.

33 This bill takes effect July 1 following enactment.

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HOUSE FILE 2472

H-5493

1 Amend House File 2472 as follows:

5557 2 1. Page 3, by striking lines 5 through 9 and
3 inserting in lieu thereof the following: "Monday,
4 however, a holder of a liquor control license or".

H-5493 FILED MARCH 8, 1984 BY PEICK of Linn

Lower 3/9 (p. 892)

HOUSE FILE 2472

H-5503

1 Amend House File 2472 as follows:

2 1. Page 4, line 9, by inserting after the figure
3 "123" the words and figure ", except as permitted
4 under section 123.47".

H-5503 FILED MARCH 8, 1984 BY CARPENTER of Polk

Adopted 3/9 (p. 889)

HOUSE FILE 2472

H-5505

1 Amend House File 2472 as follows:

2 1. By striking page 2, lines 17 through 32 and
3 inserting in lieu thereof the following:
5556 4 "123.47 PERSONS UNDER LEGAL AGE. ~~No~~ A person
5 shall not sell, give, or otherwise supply alcoholic
6 liquor or beer to any a person knowing or having
7 reasonable cause to believe him the person to be under
8 legal age, and ~~no~~ a person or persons under legal
9 age shall individually or jointly not have or attempt
10 to have alcoholic liquor or beer in his or their the
11 person's possession or control; except in the case
12 of liquor or beer given or dispensed to a person under
13 legal age within a private home and with-the-knowledge
14 and-consent in the presence of the parent or guardian
15 for beverage or medicinal purposes or as administered
16 to him the person by either a physician or dentist
17 for medicinal purposes and except to the extent that
18 a person under legal age may handle alcoholic beverages
19 and beer during the regular course of his or her
20 employment by a liquor control licensee or beer
21 permittee under this chapter."

H-5505 FILED MARCH 8, 1984 BY ROSENBERG of Story

Adopted 3/9 (p. 883)

*Reconsidered & Adopted as amended
by 5556 (p. 892)*

H-5449

1 Amend House File 2472 as follows:

2 1. Page 4, by inserting after line 9 the following
3 new section:

4 "Sec. ____ . Section 321.189, subsection 1, Code
5 1983, is amended by inserting after unnumbered
6 paragraph 1 the following new unnumbered paragraph:
7 NEW UNNUMBERED PARAGRAPH. A motor vehicle license
8 or a nonoperator's identification card issued to a
9 person under nineteen years of age shall be identical
10 in form to any other motor vehicle license or
11 nonoperator's identification card issued to any other
12 person, except that the photograph appearing on the
13 face of the license or card shall be a side profile
14 of the applicant. Upon attaining the age of nineteen,
15 the person shall be entitled to a new motor vehicle
16 license or nonoperator's identification card and the
17 applicant shall receive a credit against the cost
18 of a new motor vehicle license or nonoperator's
19 identification card in an amount equal to the
20 apportioned monthly cost for the unexpired months
21 of the motor vehicle license or the nonoperator's
22 identification card. This paragraph is effective
23 for licenses or cards issued after the effective date
24 of this Act."

25 2. Renumber sections and correct internal
26 references as necessary in accordance with this
27 amendment.

BY RENAUD of Polk
DE GROOT of Lyon
HANSON of Delaware
CHAPMAN of Linn
WOODS of Polk

Adopted 3/9 (p. 890)
H-5449 FILED MARCH 7, 1984

H-5495

1 Amend House File 2472 as follows:

2 1. Page 3, by inserting after line 13 the
3 following:

4 "Sec. 4. Section 123.50, subsection 3, paragraphs
5 a, b, and c, Code 1983, are amended to read as follows:
6 a. Upon a first conviction, the violator's liquor
7 control license or beer permit shall be suspended
8 for a period of ~~fourteen~~ ninety days.

9 b. Upon a second conviction within a period of
10 two years, the violator's liquor control license or
11 beer permit shall be suspended for a period of ~~thirty~~
12 one hundred and eighty days.

13 c. Upon a third conviction within a period of
14 five years, the violator's liquor control license
15 or beer permit shall be suspended for a period of
16 ~~sixty two hundred and seventy~~ days."

17 2. By renumbering sections as required by this
18 amendment.

H-5495 FILED MARCH 8, 1984 BY LAGESCHULTE of Bremer
Loat 3/9 (p. 887)

HOUSE FILE 2472

H-5559

1 Amend House File 2472 as follows:
2 1. Page 4, by inserting after line 9 the following:
3 "Sec. ____ Section 321B.13, Code 1983, is amended
4 by adding the following new unnumbered paragraph:
5 NEW UNNUMBERED PARAGRAPH. The department may,
6 on application, issue a temporary restricted license
7 to a person whose license has been revoked under this
8 section and who has entered a plea of guilty to a
9 charge under section 321.281 when the person's regular
10 employment includes the operation of a motor vehicle
11 or who cannot perform the person's regular occupation
12 without the use of a motor vehicle, or when the
13 person's use of a motor vehicle is necessary to attend
14 evaluation, treatment or educational services for
15 alcohol or drug dependency, but the person shall not
16 operate a vehicle for pleasure while holding a
17 restricted license. However, this paragraph does
18 not apply to a person whose license is suspended or
19 revoked for another reason."

BY SCHROEDER of Pottawattamie
DODERER of Johnson

H-5559 FILED MARCH 9, 1984

JAY of Appanoose

MOTION TO SUSPEND THE RULES LOST (p. 894)

HOUSE FILE 2472

H-5562

1 Amend House File 2472 as follows:
2 1. Page 3, by striking lines 11 through 13, and
3 inserting in lieu thereof the words "liquor or beer
4 on Sunday may sell or dispense ~~such~~ alcoholic liquor
5 or beer for consumption on the licensed premises
6 between the hours of ~~noon~~ ten a.m. and ten-p-m- twelve
7 midnight on Sunday, and may sell or dispense beer
8 for consumption off the licensed premises between
9 the hours of ten a.m. and ten p.m.

H-5562 FILED MARCH 9, 1984

BY PAULIN of Plymouth

ADOPTED (p. 896)

HOUSE FILE 2472

H-5580

1 Amend House File 2472 as follows:
2 1. Title page, by striking lines 3 through 5 and
3 inserting in lieu thereof the following: "alcoholic
4 beverages and beer, the notification of parents or
5 legal guardians of a child that appears before the
6 court for a violation of section 123.47, the motor
7 vehicle license or nonoperator's identification card
8 issued to a person under nineteen years of age, and
9 providing penalties."

H-5580 FILED MARCH 9, 1984

BY RENAUD of Polk

ADOPTED BY UNANIMOUS CONSENT (p. 896)

H-5527

1 Amend House File 2472 as follows:

- 2 1. Page 3, line 6, by striking the words "twelve
 3 midnight" and inserting in lieu thereof the words
 4 "ten p.m.".
 5 2. Page 3, line 8, by striking the words "twelve
 6 midnight" and inserting in lieu thereof the words
 7 "ten p.m.".
 8 3. Page 3, line 12, by striking the words "ten
 9 p.m." and inserting in lieu thereof the words "ten
 10 p.m.". β
 11 4. Page 3, line 13, by striking the words "twelve
 12 midnight".

BY OSTERBERG of Linn

BRANSTAD of Winnebago

H-5527 FILED MARCH 8, 1984

A-Adopted, B. Loss 3/9 (p. 886)

Revised & adopted
 (p. 894) HOUSE FILE 2472

H-5535

1 Amend House File 2472 as follows:

- 2 1. Page 3, line 25, by inserting after the word
 3 "misdemeanor" the words "with a minimum fine of one
 4 hundred dollars for a first offense, two hundred and
 5 fifty dollars for a second offense, and five hundred
 6 dollars for a third and subsequent offense, and a
 7 maximum fine for any offense of not more than one
 8 thousand dollars".

H-5535 FILED MARCH 8, 1984

BY SWARTZ of Marshall

Adopted 3/9 (p. 888)

HOUSE FILE 2472

H-5556

1 Amend amendment H-5505 to House File 2472 as follows:

- 2 1. Page 1, by striking lines 6 through 9 and
 3 inserting in lieu thereof the following: "liquor or
 4 beer to any a person knowing-or-having-reasonable-cause
 5 to-believe-him-to-be under legal age, and no a person
 6 or persons under legal age shall not individually or
 7 jointly have or attempt".

H-5556 FILED MARCH 9, 1984

BY MILLER of Woodbury

ADOPTED (p. 892)

HOUSE FILE 2472

H-5557

1 Amend House amendment H-5493 to House File 2472
 2 as follows:

- A 3 1. Page 1, line 3, by inserting after the word
 4 "Monday," the words "or sell beer for consumption
 5 off premises to a person under twenty-one years of
 6 age".
 7 2. Page 1, by inserting after line 4 the following:
 B 8 "2. Page 3, line 13, by inserting after the word
 9 "Sunday" the words ", except a licensee or permittee
 10 may not sell beer for consumption off premises to
 11 a person under twenty-one years of age"."

H-5557 FILED MARCH 9, 1984

BY BENNETT of Ida

MILLER of Woodbury

DIVISION A - LOST DIVISION B - NOT GERMANE

3/9 (p. 890),

(p. 891)

H-5508

1 Amend House File 2472 as follows:

2 1. By striking page 3, line 28 through page 4,
 3 line 3, and inserting in lieu thereof the following:
 4 "Violations by a child of provisions of chapters
 5 106, 106A, 109, 109A, 110, 110A, 110B, 111, 321, or
 6 321G which would be simple misdemeanors if committed
 7 by an adult, violations of county or municipal curfew
 8 or traffic ordinances, and violations by a child of
 9 the provisions of section 123.47, are excluded from
 10 the jurisdiction of the juvenile court and shall be
 11 prosecuted as simple misdemeanors as provided by law.
 12 The court may advise appropriate juvenile authorities
 13 and may refer violations of section 123.47 to the
 14 juvenile court when there is reason to believe that
 15 the child regularly abuses alcohol and may be in need
 16 of treatment. The court shall notify the parents
 17 or legal guardians of a child that appears before
 18 it for a violation of section 123.47."

BY SWEARINGEN of Keokuk
 COREY of Louisa
 CLARK of Cerro Gordo
 HARBOR of Mills
 MULLINS of Kossuth
 CARTER of Henry

H-5508 FILED MARCH 8, 1984

*Last 3/9 (p. 888)**As amended adopted (p. 890)*

HOUSE FILE 2472

H-5521

1 Amend House File 2472 as follows:

2 1. Page 3, by striking lines 21 and 22 and
 3 inserting in lieu thereof the words "of one hundred
 4 dollars for a first offense, two hundred and fifty
 5 dollars for a second offense within a twelve month
 6 period, and five hundred dollars for a third offense
 7 within a twelve month period."
 8 2. Page 4, by inserting after line 9 the following:
 9 "Sec. ____ Section 602.6405, subsection 1, Code
 10 Supplement 1983, is amended to read as follows:
 11 1. Magistrates have jurisdiction of simple
 12 misdemeanors, including traffic and ordinance
 13 violations, and preliminary hearings, search warrant
 14 proceedings, and small claims. They also have
 15 jurisdiction to exercise the powers specified in
 16 sections 644.2 and 644.12, and to hear complaints
 17 or preliminary informations, issue warrants, order
 18 arrests, make commitments, and take bail. They also
 19 have jurisdiction of first offense violations of
 20 section 321.281 but only to the extent that they may
 21 approve trial informations, conduct arraignments,
 22 accept guilty pleas if the defendant is represented
 23 by legal counsel, sentence those pleading guilty and
 24 make appropriate orders authorized by section 321.283.
 25 They also have jurisdiction over violations of section
 26 123.49, subsection 2, paragraph "h"."

BY JAY of Appanoose
 WOODS of Polk
 PARKER of Jasper

H-5521 FILED MARCH 8, 1984

Adopted 3/9 (p. 887)

HOUSE FILE 2472

H-5506

1 Amend House File 2472 as follows:
 2 1. Page 1, by inserting before line 1 the
 3 following:
 4 "Section 1. Section 123.3, subsection 33, Code
 5 1983, is amended to read as follows:
 6 33. "Legal age" means ~~nineteen~~ twenty-one years
 7 of age or more.
 8 Sec. 2. Section 1 of this Act does not apply to
 9 persons born on or before June 30, 1965."
 10 2. By renumbering as required by this amendment.

BY VAN CAMP of Scott
 MAULSBY of Calhoun
 BRANSTAD of Winnebago
 VAN GERPEN of Black Hawk
 COREY of Louisa
 HERMANN of Scott

H-5506 FILED MARCH 8, 1984

Revised not journal 3/9 (p. 882)

HOUSE FILE 2472

H-5507

1 Amend House File 2472 as follows:
 2 1. Page 2, by inserting after line 32 the
 3 following:
 4 "2. A person shall not sponsor, promote, or
 5 knowingly aid or assist in the sponsoring or promoting
 6 of or allow use of premises for a meeting, party,
 7 gathering, or other assemblage which the person knows
 8 or reasonably should know will be attended by one
 9 or more persons under legal age to whom alcoholic
 10 beverages or beer will be sold, given or supplied
 11 in violation of this chapter.

12 A district court or district associate court shall
 13 enjoin a meeting, party, gathering, or other assemblage
 14 if upon hearing the court finds that the sponsors
 15 or promoters of the event have not taken reasonable
 16 steps to prevent the possession or consumption of
 17 alcoholic beverages or beer at or as a result of the
 18 event by persons under legal age in violation of this
 19 chapter. Injunctive relief may also be granted against
 20 all persons selling, renting, or otherwise furnishing
 21 any goods or services to the event."

BY SHERZAN of Polk
 CARPENTER of Polk
 HAVERLAND of Polk

H-5507 FILED MARCH 8, 1984

Lost 3/9 (p. 884)

HOUSE FILE 2472

H-5514

1 Amend House File 2472 as follows:
 2 1. Page 4, by inserting after line 3 the following:
 3 "Sec. ____ . Section 232.22, Code 1983, is amended
 4 by adding the following new subsection:
 5 NEW SUBSECTION. 5. A child shall not be placed
 6 in detention as provided in this section as a result
 7 of their violation or alleged violation of section
 8 123.47."
 9 2. By renumbering as required by this amendment.

H-5514 FILED MARCH 8, 1984 BY ROSENBERG of Story

Adopted 3/9 (p. 889) Reconsidered w/d (p. 895)

The following persons respectfully request to be added as sponsors of amendment H-5506 to House File 2472:

Welden of Hardin
 Clark of Cerro Gordo
 Daggett of Taylor

Hoffmann-Bright
 of Muscatine
 Schnekloth of Scott
 Bennett of Ida
 Paulin of Plymouth
 Halvorson of Clayton

Sen. State Court 3/16 Amended per 55528
Do Pass 3/28 (p. 1138)

HOUSE FILE 2472

State Government
Carr, Chair
Slater
Briles

HOUSE FILE 2472

BY COMMITTEE ON STATE GOVERNMENT

(As Amended and Passed by the House)

Re Passed House, Date 4-20-84 (p. 2446) Passed Senate, Date 3-29-84 (p. 1155)

Vote: Ayes 92 Nays 3 Vote: Ayes 46 Nays 2

Approved May 14, 1984
Motion to Reconsider (p. 1156) w/d 4/20

A BILL FOR

1 An Act relating to the transportation of open containers of
2 alcoholic beverages and beer, the hours of sale of
3 alcoholic beverages and beer, the notification of parents
4 or legal guardians of a child that appears before the
5 court for a violation of section 123.47, the motor
6 vehicle license or nonoperator's identification card
7 issued to a person under nineteen years of age, and
8 providing penalties.

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

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House Amendments _____

5552
Amended
also

1 Section 1. Section 123.28, Code 1983, is amended to read
2 as follows:

3 123.28 TRANSPORTATION PERMITTED. It ~~shall-be~~ is lawful
4 to transport, carry, or convey alcoholic liquors from the
5 place of purchase by the department to ~~any~~ a state warehouse,
6 store, or depot established by the department or from one
7 such place to another and, when so permitted by this chapter,
8 it ~~shall-be~~ is lawful for ~~any~~ a common carrier or other person
9 to transport, carry, or convey alcoholic liquor sold by a
10 vendor from a state warehouse, store, depot or point of
11 purchase by the state to any place to which ~~such~~ the liquor
12 may be lawfully delivered under this chapter. Notwithstanding
13 section 321.230, sections 321.225 and 321.226 do not apply
14 to department employees in the regular course of their
15 employment. A common carrier or other person shall not break
16 or open or allow to be broken or opened ~~any~~ a container or
17 package containing alcoholic liquor or use or drink or allow
18 to be used or drunk any alcoholic liquor while it is being
19 transported or conveyed, but this section ~~shall~~ does not
20 prohibit a private person from transporting individual bottles
21 or containers of alcoholic liquor exempted pursuant to section
22 123.22 and individual bottles or containers bearing the
23 identifying mark prescribed in section 123.26 which have been
24 opened previous to the commencement of ~~such~~ the transportation,
25 and which are transported in a portion of the motor vehicle
26 that is not accessible to the driver when the vehicle is
27 moving. This section ~~shall~~ does not affect the right of ~~any~~
28 a special permit or liquor control license holder to purchase,
29 possess, or transport alcoholic liquors subject to the
30 provisions of this chapter.

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

1 highway. Evidence that an open or unsealed receptacle con-
2 taining an alcoholic beverage or beer was found in the glove
3 compartment, utility compartment, console, front passenger
4 seat, or any unlocked portable device and within the immediate
5 reach of the driver while the motor vehicle is upon a public
6 street or highway is evidence from which the court or jury
7 may infer that the driver intended to consume the alcoholic
8 beverage or beer while upon the public street or highway.
9 However, an open or unsealed receptacle containing an alcoholic
10 beverage or beer may be transported at any time in the trunk
11 of the motor vehicle or in some other area of the interior
12 of the motor vehicle not designed or intended to be occupied
13 by the driver or not readily accessible to the driver while
14 the motor vehicle is in motion.

15 Sec. 2. Section 123.47, Code 1983, is amended to read
16 as follows:

17 123.47 PERSONS UNDER LEGAL AGE. No A person shall not
18 sell, give, or otherwise supply alcoholic liquor or beer to
19 any a person knowing-or-having-reasonable-cause-to-believe
20 him-to-be under legal age, and no a person or persons under
21 legal age shall not individually or jointly have or attempt
22 to have alcoholic liquor or beer in his-or-their the person's
23 possession or control; except in the case of liquor or beer
24 given or dispensed to a person under legal age within a private
25 home and with-the-knowledge-and-consent in the presence of
26 the parent or guardian for beverage or medicinal purposes
27 or as administered to him the person by either a physician
28 or dentist for medicinal purposes and except to the extent
29 that a person under legal age may handle alcoholic beverages
30 and beer during the regular course of his-or-her employment
31 by a liquor control licensee or beer permittee under this
32 chapter.

33 Sec. 3. Section 123.49, subsection 2, paragraph b, Code
34 1983, is amended to read as follows:

35 b. Sell or dispense any alcoholic beverage or beer on

1 the premises covered by the license or permit, or permit the
2 its consumption thereon on the premises between the hours
3 of two a.m. and six a.m. on any a weekday, and between the
4 hours of two a.m. on Sunday and six a.m. on the following
5 Monday, or sell or dispense beer for consumption off the
6 licensed premises between the hours of ten p.m. and six a.m.
7 the next morning on a weekday and between the hours of ten
8 p.m. on Saturday night and six a.m. the following Monday,
9 however, a holder of a liquor control license or retail beer
10 permit granted the privilege of selling alcoholic liquor or
11 beer on Sunday may sell or dispense such alcoholic liquor
12 or beer for consumption on the licensed premises between the
13 hours of ~~noon~~ ten a.m. and ~~ten p.m.~~ twelve midnight on Sunday,
14 and may sell or dispense beer for consumption off the licensed
15 premises between the hours of ten a.m. and ten p.m.

16 Sec. 4. Section 123.50, Code 1983, is amended by adding
17 the following new subsections:

18 NEW SUBSECTION. 4. If a licensee or permittee or an em-
19 ployee of a licensee or permittee is convicted of a violation
20 of section 123.49, subsection 2, paragraph "h", in addition
21 to the other penalties fixed for such a violation by this
22 section, the licensee or permittee shall be assessed a fine
23 of one hundred dollars for a first offense, two hundred and
24 fifty dollars for a second offense within a twelve month
25 period, and five hundred dollars for a third offense within
26 a twelve month period.

27 NEW SUBSECTION. 5. A person, other than a licensee or
28 permittee or a minor, who violates section 123.47 is guilty
29 of a serious misdemeanor with a minimum fine of one hundred
30 dollars for a first offense, two hundred and fifty dollars
31 for a second offense, and five hundred dollars for a third
32 and subsequent offense, and a maximum fine for any offense
33 of not more than one thousand dollars.

34 Sec. 5. Section 232.8, subsection 1, unnumbered para-
35 graph 2, Code 1983, is amended to read as follows:

1 Violations by a child of provisions of chapters 106, 106A,
2 109, 109A, 110, 110A, 110B, 111, 321, or 321G which would
3 be simple misdemeanors if committed by an adult, violations
4 of county or municipal curfew or traffic ordinances, and
5 violations by a child of the provisions of section 123.47,
6 are excluded from the jurisdiction of the juvenile court and
7 shall be prosecuted as simple misdemeanors as provided by
8 law. The court may advise appropriate juvenile authorities
9 and may refer violations of section 123.47 to the juvenile
10 court when there is reason to believe that the child regularly
11 abuses alcohol and may be in need of treatment. The court
12 shall notify the parents or legal guardians of a child that
13 appears before it for a violation of section 123.47.

14 Sec. 6. Section 233.1, Code 1983, is amended by adding
15 the following new subsection:

16 NEW SUBSECTION. 6. To sell, give, or otherwise supply
17 alcoholic liquor or beer to any person, knowing or having
18 reasonable cause to believe the person to be under legal age
19 as defined in chapter 123, except as permitted under section
20 123.47.

21 Sec. 7. Section 321.189, subsection 1, Code 1983, is
22 amended by inserting after unnumbered paragraph 1 the following
23 new unnumbered paragraph:

24 NEW UNNUMBERED PARAGRAPH. A motor vehicle license or a
25 nonoperator's identification card issued to a person under
26 nineteen years of age shall be identical in form to any other
27 motor vehicle license or nonoperator's identification card
28 issued to any other person, except that the photograph
29 appearing on the face of the license or card shall be a side
30 profile of the applicant. Upon attaining the age of nineteen,
31 the person shall be entitled to a new motor vehicle license
32 or nonoperator's identification card and the applicant shall
33 receive a credit against the cost of a new motor vehicle
34 license or nonoperator's identification card in an amount
35 equal to the apportioned monthly cost for the unexpired months

1 of the motor vehicle license or the nonoperator's
2 identification card. This paragraph is effective for licenses
3 or cards issued after the effective date of this Act.

4 Sec. 8. Section 602.6405, subsection 1, Code Supplement
5 1983, is amended to read as follows:

6 1. Magistrates have jurisdiction of simple misdemeanors,
7 including traffic and ordinance violations, and preliminary
8 hearings, search warrant proceedings, and small claims. They
9 also have jurisdiction to exercise the powers specified in
10 sections 644.2 and 644.12, and to hear complaints or
11 preliminary informations, issue warrants, order arrests, make
12 commitments, and take bail. They also have jurisdiction of
13 first offense violations of section 321.281 but only to the
14 extent that they may approve trial informations, conduct
15 arraignments, accept guilty pleas if the defendant is
16 represented by legal counsel, sentence those pleading guilty
17 and make appropriate orders authorized by section 321.283.
18 They also have jurisdiction over violations of section 123.49,
19 subsection 2, paragraph "h".

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S-5668

1 Amend Senate Amendment S-5552 to House File 2472
2 as amended, passed, and reprinted by the House as
3 follows:

4 1. Page 2, by inserting after line 9 the following:

5 "Sec. 2. Section 123.36, subsection 6, Code Supplement, 1983,
6 is amended to read as follows:

7 6. Any club, hotel, motel, or commercial
8 establishment holding a liquor control license for
9 whom the sale of goods and services other than
10 alcoholic liquor or beer constitutes fifty percent
11 or more of the gross receipts from the licensed
12 premises, subject to the provisions of section 123.49,
13 subsection 2, paragraph "b", may sell and dispense
14 alcoholic liquor and beer to patrons on Sunday for
15 consumption on the premises only between the hours
16 of ten a.m. and twelve midnight on Sunday, and beer
17 for consumption on- or off the premises between the
18 hours of ~~noon~~ ten a.m. and ~~ten-p.m.~~ twelve midnight
19 on Sunday, except beer which has been refrigerated
20 or otherwise chilled may not be sold or dispensed
21 for consumption off the premises later than ten p.m.
22 on Sunday. For the privilege of selling beer and
23 alcoholic liquor on the premises on Sunday the liquor
24 control license fee of the applicant shall be increased
25 by twenty percent of the regular fee prescribed for
26 the license pursuant to this section, and the privilege
27 shall be noted on the liquor control license. The
28 department shall prescribe the nature and the character
29 of the evidence which shall be required of the
30 applicant under this subsection."

31 2. Page 2, by striking lines 12 through 22 and
32 inserting in lieu thereof the following:

33 "b. Sell or dispense any alcoholic beverage or
34 beer on the premises covered by the license or permit,
35 or permit the its consumption thereon on the premises
36 between the hours of two a.m. and six a.m. on any
37 a weekday, and between the hours of two a.m. on Sunday
38 and six a.m. on the following Monday, or sell or
39 dispense beer which has been refrigerated or otherwise
40 chilled for consumption off the licensed premises
41 between the hours of ten p.m. and six a.m. the next
42 morning on a weekday and between the hours of ten
43 p.m. on Saturday night and six a.m. the following
44 Monday, however, a holder of a liquor control license
45 or retail beer permit granted the privilege of selling
46 alcoholic liquor or beer on Sunday may sell or dispense
47 such alcoholic liquor or beer between the hours of
48 ~~noon~~ ten a.m. and ~~ten-p.m.~~ twelve midnight on Sunday,
49 except beer which has been refrigerated or otherwise
50 chilled may not be sold or dispensed for consumption

1 off the licensed premises later than ten p.m. on
2 Sunday."

3 3. Page 2, by inserting after line 42 the
4 following:

5 "Sec. 5. Section 123.134, subsection 5, Code 1983,
6 is amended to read as follows:

7 5. Any club, hotel, motel, or commercial
8 establishment holding a class "B" beer permit for
9 whom the sale of goods and services other than beer
10 constitutes fifty percent or more of the gross receipts
11 from the licensed premises, subject to the provisions
12 of section 123.49, subsection 2, paragraph "b", may
13 sell and dispense beer to patrons on Sunday for
14 consumption ~~on or off the premises and for consumption~~
15 ~~of beer off the premises between the hours of noon~~
16 ~~and between the hours of ten a.m. and twelve midnight~~
17 on Sunday, except beer which has been refrigerated
18 or otherwise chilled may not be sold or dispensed
19 for consumption off the premises later than ten p.m.
20 on Sunday. Any class "C" beer permittee may sell beer
21 for consumption off the premises between the hours
22 of ~~noon~~ ten a.m. and ~~ten p.m.~~ twelve midnight on Sunday,
23 except beer which has been refrigerated or otherwise
24 chilled may not be sold or dispensed for consumption
25 off the premises later than ten p.m. on Sunday. For
26 the privilege of selling beer on Sunday the beer
27 permit fees of the applicant shall be increased by
28 twenty percent of the regular fees prescribed for
29 the permit pursuant to this section and the privilege
30 shall be noted on the beer permit. The department
31 shall prescribe the nature and character of the
32 evidence which shall be required of the applicant
33 under this subsection."

34 4. By renumbering as required by this amendment.

S-5668 FILED

BY EDGAR H. HOLDEN

MARCH 29, 1984

RULED OUT OF ORDER (p. 1154)

HOUSE FILE 2472

S-5640

1 Amend Senate Amendment S-5552 to House File 2472
2 as amended, passed and reprinted by the House as
3 follows:
4 1. Page 3, by inserting after line 27 the
5 following:
6 "Sec. ____ Sections 123.92, 123.93, 123.94, and
7 123.96 are repealed."

S-5640 FILED
MARCH 28, 1984

BY JAMES V. GALLAGHER

Out of order 3/29 (p. 1155)

HOUSE FILE 2472

S-5661

1 Amend amendment S-5552 to House File 2472 as
2 amended, passed and reprinted by the House as follows:
3 1. Page 1, by striking line 5 and inserting in
4 lieu thereof the following:
5 "Section 1. Section 123.3, subsection 33, Code
6 1983, is amended to read as follows:
7 33. "Legal Age" means nineteen twenty-one years
8 of age or more or the age of a person born on or
9 before June 30, 1965.
10 Sec. 2. Section 123.28, Code 1983, is amended".
11 2. Page 2, by inserting after line 9 the following:
12 "Sec. 3. Section 123.47, Code 1983, is amended
13 to read as follows:
14 123.47 PERSONS UNDER LEGAL AGE. No A person shall
15 not sell, give, or otherwise supply alcoholic liquor
16 or beer to any a person knowing-or-having-reasonable
17 cause-to-believe-him-to-be under legal age, and no
18 a person or persons under legal age shall not
19 individually or jointly have or attempt to have
20 alcoholic liquor or beer in his-or-their the person's
21 possession or control; except in the case of liquor
22 or beer given or dispensed to a person under legal
23 age within a private home and with-the-knowledge-and
24 consent in the presence of the parent or guardian
25 for beverage or medicinal purposes or as administered
26 to him the person by either a physician or dentist
27 for medicinal purposes and except to the extent that
28 a person under legal age may handle alcoholic beverages
29 and beer during the regular course of his-or-her
30 employment by a liquor control licensee or beer
31 permittee under this chapter."
32 3. Page 2, by striking lines 21 and 22 and
33 inserting in lieu thereof the following: "or beer
34 between the hours of noon and ten p.m. on Sunday."

S-5661 FILED
MARCH 29, 1984

BY JOHN JENSEN
WILLIAM DIELEMAN

DIVISION A - RULED OUT OF ORDER (*p. 1153*)
DIVISION B - RULED OUT OF ORDER ("")
DIVISION C - LOST (*p. 1154*)

HOUSE FILE 2472

S-5628

- 1 Amend the amendment S-5552 to House File 2472 as
2 amended, passed, and reprinted by the House as follows:
3 1. Page 1, by striking lines 32 through 34 and
4 inserting in lieu thereof the words "the trans-
5 portation. This section".
6 2. Page 1, line 39, by inserting after the word
7 "person" the words "driving a motor vehicle".
8 3. Page 1, line 46, by inserting after the word
9 "found" the words "during an authorized search".
10 4. Page 2, line 4, by inserting after the word
11 "highway" the words "if the inference is supported by
12 corroborative evidence".

S-5628 FILED

BY TOM SLATER

MARCH 28, 1984

Adopted 3/28 (p. 1135)

HOUSE FILE 2472

S-5638

- 1 Amend the amendment S-5552 to House File 2472 as
2 amended, passed and reprinted by the House as follows:
3 1. Page 2, by striking lines 25 through 34.
4 2. Page 3, by striking lines 19 through 25 and
5 inserting in lieu thereof the following: "arrests,
6 make commitments, and take bail. They-also-have
7 ~~jurisdiction-of-first-offense-violations-of-section~~
8 ~~321-281-but-only-to-the-extent-that-they-may-approve~~
9 ~~trial-informations,-conduct-arraignments,-accept~~
10 ~~guilty-pleas-if-the-defendant-is-represented-by-legal~~
11 ~~counsel,-sentence-those-pleading-guilty-and-make~~
12 ~~appropriate-orders-authorized-by-section-321-283."~~

S-5638 FILED

BY BOB CARR

MARCH 28, 1984

Out of order 3/28 (p. 1155)

HOUSE FILE 2472

S-5639

- 1 Amend Senate Amendment S-5552 to House File 2472
2 as amended, passed and reprinted by the House as
3 follows:
4 1. Page 2, by striking lines 24 through 34 and
5 inserting in lieu thereof the words "by adding the
6 following new subsection":
7 2. Page 3, by striking lines 19 through 25 and
8 inserting in lieu thereof the following: "arrests,
9 make commitments, and take bail. They-also-have
10 ~~jurisdiction-of-first-offense-violations-of-section~~
11 ~~321-281-but-only-to-the-extent-that-they-may-approve~~
12 ~~trial-informations,-conduct-arraignments,-accept~~
13 ~~guilty-pleas-if-the-defendant-is-represented-by-legal~~
14 ~~counsel,-sentence-those-pleading-guilty-and-make~~
15 ~~appropriate-orders-authorized-by-section-321-283."~~

S-5639 FILED

BY ROBERT M. CARR

MARCH 28, 1984

Adopted 3/28 (p. 1154)

HOUSE FILE 2472

-5607

1 Amend Senate amendment S-5552 to House File 2472
2 as amended, passed and reprinted by the House as
3 follows:

A 4 1. Page 2, line 8, by inserting after the word
5 "vehicle" the words "not designed or intended to be
6 occupied by the driver and".

7 2. Page 2, by inserting after line 9 the following:

8 "Sec. 2. Section 123.36, subsection 6, Code Supplement, 1983
9 is amended to read as follows:

10 6. Any club, hotel, motel, or commercial
11 establishment holding a liquor control license for
12 whom the sale of goods and services other than
13 alcoholic liquor or beer constitutes fifty percent
14 or more of the gross receipts from the licensed
15 premises, subject to the provisions of section 123.49,
16 subsection 2, paragraph "b", may sell and dispense
17 alcoholic liquor to patrons on Sunday for consumption
18 on the premises only, and beer for consumption on
19 or off the premises between the hours of ~~noon~~ ten
20 a.m. and ~~ten p.m.~~ twelve midnight on Sunday. For
21 the privilege of selling beer and alcoholic liquor
22 on the premises on Sunday the liquor control license
23 fee of the applicant shall be increased by twenty
24 percent of the regular fee prescribed for the license
25 pursuant to this section, and the privilege shall
26 be noted on the liquor control license. The department
27 shall prescribe the nature and the character of the
B 28 evidence which shall be required of the applicant
29 under this subsection."

30 3. Page 2, by inserting after line 42 the
31 following:

32 "Sec. 5. Section 123.134, subsection 5, Code 1983,
33 is amended to read as follows:

34 5. Any club, hotel, motel, or commercial
35 establishment holding a class "B" beer permit for
36 whom the sale of goods and services other than beer
37 constitutes fifty percent or more of the gross receipts
38 from the licensed premises, subject to the provisions
39 of section 123.49, subsection 2, paragraph "b", may
40 sell and dispense beer to patrons on Sunday for
41 consumption on the premises and for consumption of
42 beer off the premises between the hours of ~~noon~~ 10
43 a.m. and ~~ten p.m.~~ twelve midnight on Sunday. Any class
44 "C" beer permittee may sell beer for consumption off
45 the premises between the hours of ~~noon~~ ten a.m. and
46 ~~ten p.m.~~ twelve midnight on Sunday. For the privilege
47 of selling beer on Sunday the beer permit fees of
48 the applicant shall be increased by twenty percent
49 of the regular fees prescribed for the permit pursuant
50 to this section and the privilege shall be noted on

S-5607

PAGE 2

1 the beer permit. The department shall prescribe the
2 nature and character of the evidence which shall be
3 required of the applicant under this subsection."

4 4. Page 3, line 26, by inserting after the word
5 "section" the figure and words "123.47 and section".

6 5. By renumbering as required by this amendment.

S-5607 FILED

BY ROBERT M. CARR

MARCH 28, 1984

A- Adopted 3/28 (p. 1153)

B- Adopted (p. 1154)

HOUSE FILE 2472

S-5597

1 Amend Senate amendment S-5552 to House File 2472
2 as amended, passed and reprinted by the House as
3 follows:

4 1. Page 2, by striking lines 10 through 22 and
5 inserting in lieu thereof the following:

6 "Sec. 2. Section 123.47, Code 1983, is amended
7 to read as follows:

8 123.47 PERSONS UNDER LEGAL AGE. No A person shall
9 not sell, give, or otherwise supply alcoholic liquor
10 or beer to any a person knowing-or-having-reasonable
11 cause-to-believe-him-to-be under legal age, and no
12 a person or persons under legal age shall not
13 individually or jointly have or attempt to have
14 alcoholic liquor or beer in his-or-their the person's
15 possession or control; except in the case of liquor
16 or beer given or dispensed to a person under legal
17 age within a private home and with-the-knowledge-and
18 consent in the presence of the parent or guardian
19 for beverage or medicinal purposes or as administered
20 to him the person by either a physician or dentist
21 for medicinal purposes and except to the extent that
22 a person under legal age may handle alcoholic beverages
23 and beer during the regular course of his-or-her
24 employment by a liquor control licensee or beer
25 permittee under this chapter.

26 Sec. 3. Section 123.49, subsection 2, paragraph
27 b, Code 1983, is amended to read as follows:

28 b. Sell or dispense any alcoholic beverage or
29 beer on the premises covered by the license or permit,
30 or permit the its consumption thereon on the premises
31 between the hours of two a.m. and six a.m. on any
32 a weekday, and between the hours of two a.m. on Sunday
33 and six a.m. on the following Monday, or sell or
34 dispense beer for consumption off the licensed premises
35 between the hours of ten p.m. and six a.m. the next
36 morning on a weekday and between the hours of ten
37 p.m. on Saturday night and six a.m. the following
38 Monday, however, a holder of a liquor control license
39 or retail beer permit granted the privilege of selling
40 alcoholic liquor or beer on Sunday may sell or dispense
41 such alcoholic liquor or beer for consumption on the
42 licensed premises between the hours of noon and ten
43 p.m. on Sunday, and may sell or dispense beer for
44 consumption off the licensed premises between the
45 hours of ten a.m. and ten p.m."

S-5597 FILED

BY JOHN W. JENSEN

MARCH 28, 1984

One of order 3/28 (p. 1154)

S-5604

1 Amend Senate amendment S-5552 to House File 2472
2 as amended, passed and reprinted by the House as
3 follows:

4 1. Page 3, by inserting after line 9 the following:
5 "Sec. ____ . Section 321.190, subsection 2, Code
6 1983, is amended by adding the following new unnumbered
7 paragraphs:

8 NEW UNNUMBERED PARAGRAPH. Upon conviction of a
9 minor for use of an altered nonoperator's
10 identification card or a card not the minor's own
11 while attempting to purchase or purchasing goods or
12 services prohibited to a minor or in attempting to
13 enter or entering premises prohibited to a minor,
14 the minor's card or privilege to obtain a card shall
15 be revoked for a period of five years. In the case
16 in which the minor used a card not the minor's own
17 for identification, there is a presumption that the
18 card was obtained with the owner's permission, and
19 upon conviction the owner's card shall be revoked
20 for a period of five years. A person responsible
21 for checking identification for legal age who suspects
22 that a nonoperator's card presented for identification
23 purposes does not belong to the person presenting
24 it or suspects that it has been altered may hold the
25 card and summon a peace officer to the scene. If
26 the officer determines there is cause to believe that
27 the card does not belong to the person presenting
28 it or that the card has been altered, the officer
29 shall issue a citation to the person presenting it
30 and when applicable to the person to whom the card
31 belongs and the officer shall confiscate the card
32 pending action on the citation.

33 NEW UNNUMBERED PARAGRAPH. If a person used a
34 nonoperator's identification card for identification
35 when making, uttering, drawing, delivering, or giving
36 a check, share draft, draft, or written order, on
37 a bank, credit union, person, or corporation when
38 the person knew that the check, share draft, draft,
39 or written order would not be paid when presented,
40 the person's card shall be revoked for a period of
41 five years upon a conviction.

42 Sec. ____ . Section 321.209, Code Supplement 1983,
43 is amended by adding the following new subsections:

44 NEW SUBSECTION. 9. Theft by making, uttering,
45 drawing, delivering, or giving a check, share draft,
46 draft, or written order, on a bank, credit union,
47 person, or corporation when the person knew that the
48 check, share draft, draft, or written order would
49 not be paid when presented and the person's motor
vehicle license was used for identification.

1 NEW SUBSECTION. 10. Possession of an altered
2 motor vehicle license or a motor vehicle license not
3 one's own when used by a minor in attempting to
4 purchase or purchasing goods or services prohibited
5 to a minor or in attempting to enter or entering
6 premises prohibited to a minor.

7 NEW SUBSECTION. 11. Lending a motor vehicle
8 license to a minor when used by the minor in attempting
9 to purchase or purchasing goods or services prohibited
10 to a minor or in attempting to enter or entering
11 premises prohibited to a minor.

12 Sec. ____ Section 321.216, Code 1983, is amended
13 by adding the following new unnumbered paragraph:

14 NEW UNNUMBERED PARAGRAPH. A person responsible
15 for checking identification for legal age who suspects
16 that a motor vehicle license presented for
17 identification purposes does not belong to the person
18 presenting it or suspects that it has been altered
19 may hold the motor vehicle license and summon a peace
20 officer to the scene. If the officer determines there
21 is cause to believe that the motor vehicle license
22 does not belong to the person presenting it or that
23 the motor vehicle license has been altered, the officer
24 shall issue a citation to the person presenting it
25 and when applicable to the person to whom the motor
26 vehicle license belongs and the officer shall
27 confiscate the motor vehicle license pending action
28 on the citation. In the case in which the minor used
29 a motor vehicle license not the minor's own for iden-
30 tification, there is a presumption that the motor
31 vehicle license was obtained with the owner's
32 permission."

S-5604 FILED

MARCH 28, 1984

BY CHARLES P. MILLER

Out of order 3/29 (p. 1155)

S-5552

1 Amend House File 2472 as amended, passed, and
2 reprinted by the House as follows:

3 1. By striking everything after the enacting
4 clause and inserting in lieu thereof the following:

566 5 "Section 1. Section 123.28, Code 1983, is amended
6 to read as follows:

5628 7 123.28 TRANSPORTATION PERMITTED. It ~~shall-be~~
8 is lawful to transport, carry, or convey alcoholic
9 liquors from the place of purchase by the department
10 to ~~any~~ a state warehouse, store, or depot established
11 by the department or from one such place to another
12 and, when so permitted by this chapter, it ~~shall-be~~
13 is lawful for ~~any~~ a common carrier or other person
14 to transport, carry, or convey alcoholic liquor sold
15 by a vendor from a state warehouse, store, depot or
16 point of purchase by the state to any place to which
17 ~~such the~~ liquor may be lawfully delivered under this
18 chapter. Notwithstanding section 321.230, sections
19 321.225 and 321.226 do not apply to department
20 employees in the regular course of their employment.
21 A common carrier or other person shall not break or
22 open or allow to be broken or opened ~~any~~ a container
23 or package containing alcoholic liquor or use or drink
24 or allow to be used or drunk any alcoholic liquor
25 while it is being transported or conveyed, but this
26 section ~~shall~~ does not prohibit a private person from
27 transporting individual bottles or containers of
28 alcoholic liquor exempted pursuant to section 123.22
29 and individual bottles or containers bearing the
30 identifying mark prescribed in section 123.26 which
31 have been opened previous to the commencement of ~~such~~
32 the transportation, and which are transported in a
33 portion of the motor vehicle that is not accessible
34 to the driver when the vehicle is moving. This section
35 ~~shall~~ does not affect the right of ~~any~~ a special
36 permit or liquor control license holder to purchase,
37 possess, or transport alcoholic liquors subject to
38 the provisions of this chapter.

3625 39 A person shall not knowingly possess in a motor
40 vehicle upon a public street or highway any open or
41 unsealed bottle, can, jar, or other receptacle
42 containing an alcoholic beverage or beer with the
43 intent to consume the alcoholic beverage or beer while
44 the motor vehicle is upon a public street or highway.
45 Evidence that an open or unsealed receptacle con-
46 taining an alcoholic beverage or beer was found in
47 the glove compartment, utility compartment, console,
48 front passenger seat, or any unlocked portable device
49 and within the immediate reach of the driver while
50 the motor vehicle is upon a public street or highway

1 is evidence from which the court or jury may infer
2 that the driver intended to consume the alcoholic
3 beverage or beer while upon the public street or
4 highway. However, an open or unsealed receptacle
5 containing an alcoholic beverage or beer may be
6 transported at any time in the trunk of the motor
7 vehicle or in some other area of the interior of the
8 motor vehicle not readily accessible to the driver
9 while the motor vehicle is in motion.

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387110 Sec. 2. Section 123.49, subsection 2, paragraph
11 b, Code 1983, is amended to read as follows:

56612 b. Sell or dispense any alcoholic beverage or
13 beer on the premises covered by the license or permit,
14 or permit ~~the~~ its consumption thereon between the
15 hours of two a.m. and six a.m. on any a weekday, and
16 between the hours of two a.m. on Sunday and six a.m.
17 on the following Monday, however, a holder of a liquor
18 control license or retail beer permit granted the
19 privilege of selling alcoholic liquor or beer on
20 Sunday may sell or dispense ~~such~~ alcoholic liquor
21 or beer between the hours of ~~noon~~ ten a.m. and ~~ten~~
22 p.m. twelve midnight on Sunday.

56623 Sec. 3. Section 123.50, Code 1983, is amended
24 by adding the following new subsections:

5639, 5638 25 NEW SUBSECTION. 4. If a licensee or permittee
26 or an employee of a licensee or permittee is convicted
27 of a violation of section 123.49, subsection 2,
28 paragraph "h", in addition to the other penalties
29 fixed for such a violation by this section, the
30 licensee or permittee shall be assessed a fine of
31 one hundred dollars for a first offense, two hundred
32 and fifty dollars for a second offense within a twelve
33 month period, and five hundred dollars for a third
34 offense within a twelve month period.

35 NEW SUBSECTION. 5. A person, other than a licensee
36 or permittee or a minor, who violates section 123.47
37 is guilty of a serious misdemeanor punishable by a
38 minimum fine of one hundred dollars for a first
39 offense, two hundred and fifty dollars for a second
40 offense, and five hundred dollars for a third and
41 subsequent offense, and a maximum fine for any offense
42 of not more than one thousand dollars.

5668, 5607 43 Sec. 4. Section 232.8, subsection 1, unnumbered
44 paragraph 2, Code 1983, is amended to read as follows:

45 Violations by a child of provisions of chapters
46 106, 106A, 109, 109A, 110, 110A, 110B, 111, 321, or
47 321G which would be simple misdemeanors if committed
48 by an adult, violations of county or municipal curfew
49 or traffic ordinances, and violations by a child of
50 the provisions of section 123.47, are excluded from

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PAGE 3

1 the jurisdiction of the juvenile court and shall be
2 prosecuted as simple misdemeanors as provided by law.
3 The court may advise appropriate juvenile authorities
4 and may refer violations of section 123.47 to the
5 juvenile court when there is reason to believe that
6 the child regularly abuses alcohol and may be in need
7 of treatment. The court shall notify the parents
8 or legal guardians of a child that appears before
9 it for a violation of section 123.47.

10 Sec. 5. Section 602.6405, subsection 1, Code
11 Supplement 1983, is amended to read as follows:

12 1. Magistrates have jurisdiction of simple
13 misdemeanors, including traffic and ordinance
14 violations, and preliminary hearings, search warrant
15 proceedings, and small claims. They also have
16 jurisdiction to exercise the powers specified in
17 sections 644.2 and 644.12, and to hear complaints
18 or preliminary informations, issue warrants, order
19 arrests, make commitments, and take bail. They also
20 have jurisdiction of first offense violations of
21 section 321.281 but only to the extent that they may
22 approve trial informations, conduct arraignments,
23 accept guilty pleas if the defendant is represented
24 by legal counsel, sentence those pleading guilty and
25 make appropriate orders authorized by section 321.283.
26 They also have jurisdiction over violations of section
27 123.49, subsection 2, paragraph "h".

S-5552 FILED
MARCH 27, 1984

BY COMMITTEE ON STATE GOVERNMENT
TOM SLATER, CHAIR

Adopted as amended by
5607, 5628, & 5639
3/29 (p. 1155)

HOUSE FILE 2472

FISCAL NOTE

REQUESTED BY SENATOR DOYLE

In compliance with a written request there is hereby submitted a Fiscal Note for House File 2472 as passed by the House, pursuant to Joint Rule 17.

House File 2472 as passed by the House prohibits the transportation of an opened package containing any amount of alcoholic liquor or beer in a portion of a motor vehicle accessible to the driver or passenger while the motor vehicle is moving. The bill changes the time after which beer may not be sold for consumption off the licensed premises on weekdays and Saturdays from two a.m. to ten p.m., and changes the hours during which liquor or beer may be sold or dispensed on Sundays to ten a.m. to midnight (it is currently noon to ten p.m.). The bill also contains provisions pertaining to the possession of or the attempt to obtain alcoholic liquor or beer by a minor, and providing that the drivers license or nonoperator's identification card issued to a minor shall contain a profile photograph. .

It is estimated that prohibiting the transportation of open liquor or beer packages will have no significant fiscal effect. The changes in hours for the Sunday sale of liquor is expected to cause only a minimal increase in liquor sales. No estimate can be made concerning the changes in hours for off-premises sale of beer. Records are kept only concerning beer taxes collected; no records are available regarding where and when beer is sold. It is likely that there would be more of a decrease in beer sales in border areas due to customers driving to other states, but no estimate is available.

Source: Iowa Beer and Liquor Control Department

(4127H,84-273B,JMN)

RECEIVED BY THE SECRETARY OF THE SENATE, MARCH 26, 1984

FILED:
MARCH 28, 1984

BY DENNIS C. PROUTY, DIRECTOR
LEGISLATIVE FISCAL BUREAU

SENATE AMENDMENT TO HOUSE FILE 2472

H-6507

1 Amend House File 2472 as amended, passed, and
2 reprinted by the House as follows:

3 1. By striking everything after the enacting
4 clause and inserting in lieu thereof the following:
5 "Section 1. Section 123.28, Code 1983, is amended
6 to read as follows:

7 123.28 TRANSPORTATION PERMITTED. It ~~shall be~~
8 is lawful to transport, carry, or convey alcoholic
9 liquors from the place of purchase by the department
10 to ~~any a~~ state warehouse, store, or depot established
11 by the department or from one such place to another
12 and, when so permitted by this chapter, it ~~shall be~~
13 is lawful for ~~any a~~ common carrier or other person
14 to transport, carry, or convey alcoholic liquor sold
15 by a vendor from a state warehouse, store, depot or
16 point of purchase by the state to any place to which
17 ~~such the~~ liquor may be lawfully delivered under this
18 chapter. Notwithstanding section 321.230, sections
19 321.225 and 321.226 do not apply to department
20 employees in the regular course of their employment.
21 A common carrier or other person shall not break or
22 open or allow to be broken or opened ~~any a~~ container
23 or package containing alcoholic liquor or use or drink
24 or allow to be used or drunk any alcoholic liquor
25 while it is being transported or conveyed, but this
26 section ~~shall~~ does not prohibit a private person from
27 transporting individual bottles or containers of
28 alcoholic liquor exempted pursuant to section 123.22
29 and individual bottles or containers bearing the
30 identifying mark prescribed in section 123.26 which
31 have been opened previous to the commencement of ~~such~~
32 the transportation. This section ~~shall~~ does not
33 affect the right of ~~any a~~ special permit or liquor
34 control license holder to purchase, possess, or
35 transport alcoholic liquors subject to the provisions
36 of this chapter.

37 A person driving a motor vehicle shall not knowingly
38 possess in a motor vehicle upon a public street or
39 highway any open or unsealed bottle, can, jar, or
40 other receptacle containing an alcoholic beverage
41 or beer with the intent to consume the alcoholic
42 beverage or beer while the motor vehicle is upon a
43 public street or highway. Evidence that an open or
44 unsealed receptacle containing an alcoholic beverage
45 or beer was found during an authorized search in the
46 glove compartment, utility compartment, console, front
47 passenger seat, or any unlocked portable device and
48 within the immediate reach of the driver while the
49 motor vehicle is upon a public street or highway is
50 evidence from which the court or jury may infer that

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1 the driver intended to consume the alcoholic beverage
2 or beer while upon the public street or highway if
3 the inference is supported by corroborative evidence.
4 However, an open or unsealed receptacle containing
5 an alcoholic beverage or beer may be transported at
6 any time in the trunk of the motor vehicle or in some
7 other area of the interior of the motor vehicle not
8 designed or intended to be occupied by the driver
9 and not readily accessible to the driver while the
10 motor vehicle is in motion.

11 Sec. 2. Section 123.36, subsection 6, Code
12 Supplement 1983, is amended to read as follows:

13 6. Any club, hotel, motel, or commercial
14 establishment holding a liquor control license for
15 whom the sale of goods and services other than
16 alcoholic liquor or beer constitutes fifty percent
17 or more of the gross receipts from the licensed
18 premises, subject to the provisions of section 123.49,
19 subsection 2, paragraph "b", may sell and dispense
20 alcoholic liquor to patrons on Sunday for consumption
21 on the premises only, and beer for consumption on
22 or off the premises between the hours of ~~noon~~ ten
23 a.m. and ~~ten p.m.~~ twelve midnight on Sunday. For
24 the privilege of selling beer and alcoholic liquor
25 on the premises on Sunday the liquor control license
26 fee of the applicant shall be increased by twenty
27 percent of the regular fee prescribed for the license
28 pursuant to this section, and the privilege shall
29 be noted on the liquor control license. The department
30 shall prescribe the nature and the character of the
31 evidence which shall be required of the applicant
32 under this subsection.

33 Sec. 3. Section 123.49, subsection 2, paragraph
34 b, Code 1983, is amended to read as follows:

35 b. Sell or dispense any alcoholic beverage or
36 beer on the premises covered by the license or permit,
37 or permit ~~the~~ its consumption thereon between the
38 hours of two a.m. and six a.m. on any a weekday, and
39 between the hours of two a.m. on Sunday and six a.m.
40 on the following Monday, however, a holder of a liquor
41 control license or retail beer permit granted the
42 privilege of selling alcoholic liquor or beer on
43 Sunday may sell or dispense ~~such~~ alcoholic liquor
44 or beer between the hours of ~~noon~~ ten a.m. and ~~ten~~
45 ~~p.m.~~ twelve midnight on Sunday.

46 Sec. 4. Section 123.50, Code 1983, is amended
47 by adding the following new subsection:

48 NEW SUBSECTION. 4. A person, other than a licensee
49 or permittee or a minor, who violates section 123.47
50 is guilty of a serious misdemeanor punishable by a

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1 minimum fine of one hundred dollars for a first
2 offense, two hundred and fifty dollars for a second
3 offense, and five hundred dollars for a third and
4 subsequent offense, and a maximum fine for any offense
5 of not more than one thousand dollars.

6 Sec. 5. Section 123.134, subsection 5, Code 1983,
7 is amended to read as follows:

8 5. Any club, hotel, motel, or commercial
9 establishment holding a class "B" beer permit for
10 whom the sale of goods and services other than beer
11 constitutes fifty percent or more of the gross receipts
12 from the licensed premises, subject to the provisions
13 of section 123.49, subsection 2, paragraph "b", may
14 sell and dispense beer to patrons on Sunday for
15 consumption on the premises and for consumption of
16 beer off the premises between the hours of noon 10
17 a.m. and ~~ten p.m.~~ twelve midnight on Sunday. Any class
18 "C" beer permittee may sell beer for consumption off
19 the premises between the hours of noon ~~ten a.m.~~ and
20 ~~ten p.m.~~ twelve midnight on Sunday. For the privilege
21 of selling beer on Sunday the beer permit fees of
22 the applicant shall be increased by twenty percent
23 of the regular fees prescribed for the permit pursuant
24 to this section and the privilege shall be noted on
25 the beer permit. The department shall prescribe the
26 nature and character of the evidence which shall be
27 required of the applicant under this subsection.

28 Sec. 6. Section 232.8, subsection 1, unnumbered
29 paragraph 2, Code 1983, is amended to read as follows:

30 Violations by a child of provisions of chapters
31 106, 106A, 109, 109A, 110, 110A, 110B, 111, 321, or
32 321G which would be simple misdemeanors if committed
33 by an adult, violations of county or municipal curfew
34 or traffic ordinances, and violations by a child of
35 the provisions of section 123.47, are excluded from
36 the jurisdiction of the juvenile court and shall be
37 prosecuted as simple misdemeanors as provided by law.
38 The court may advise appropriate juvenile authorities
39 and may refer violations of section 123.47 to the
40 juvenile court when there is reason to believe that
41 the child regularly abuses alcohol and may be in need
42 of treatment. The court shall notify the parents
43 or legal guardians of a child that appears before
44 it for a violation of section 123.47.

45 Sec. 7. Section 602.6405, subsection 1, Code
46 Supplement 1983, is amended to read as follows:

47 1. Magistrates have jurisdiction of simple
48 misdemeanors, including traffic and ordinance
49 violations, and preliminary hearings, search warrant
50 proceedings, and small claims. They also have

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1 jurisdiction to exercise the powers specified in
2 sections 644.2 and 644.12, and to hear complaints
3 or preliminary informations, issue warrants, order
4 arrests, make commitments, and take bail. They also
5 ~~have jurisdiction of first offense violations of~~
6 ~~section 321.281 but only to the extent that they may~~
7 ~~approve trial informations, conduct arraignments,~~
8 ~~accept guilty pleas if the defendant is represented~~
9 ~~by legal counsel, sentence those pleading guilty and~~
10 ~~make appropriate orders authorized by section 321.283.~~
11 They also have jurisdiction over violations of section
12 123.47 and section 123.49, subsection 2, paragraph
13 "h".

H-6507 FILED APRIL 20, 1984

RECEIVED FROM THE SENATE

House concurred 4/20 (72440)



Department of Justice

THOMAS J. MILLER
ATTORNEY GENERAL

ADDRESS REPLY TO:
HOOVER BUILDING
DES MOINES, IOWA 50319

October 29, 1984

Marty Francis
Dave Lyons
Legislative Service Bureau
State Capitol
L O C A L

RE: Opinion of the Attorney General

Dear Marty and Dave:

I am enclosing a copy of an opinion our office released today regarding the constitutionality of H. F. 2472, the Open Container Law. Specifically, we opined that Sec. 7 of the Act, as it pertains to the jurisdiction of magistrates to hear §§ 321.281 and 123.49(2)(h) violations, is not sufficiently expressed in the Act's title.

I want to thank you both for your invaluable assistance in researching and analyzing the issue.

Sincerely,


LYNN M. WALDING
Assistant Attorney General

LMW:sg

Enclosure

GENERAL ASSEMBLY; STATUTES; TITLES. Iowa Const. Art. III, § 29; House File 2472 (1983 Session); Iowa Code §§ 123.47, 123.49(2)(h), and 321.281 (1983). House File 2472 (1983 Session), an act providing for the enforcement of certain alcoholic liquor and beer laws, is, in part, unconstitutional as a violation of Art. III, § 29 of the Iowa Constitution. Section 7 of the act, as it pertains to the jurisdiction of magistrates to hear §§ 321.281 and 123.49(2)(h) violations, is not sufficiently expressed in the title. (Walding to Huffman, Pocahontas County Attorney, 10/29/84) #84-10-8

October 29, 1984

The Honorable H. Dale Huffman
Pocahontas County Attorney
15 N.W. 3rd Avenue
P. O. Box 35
Pocahontas, Iowa 50574

Dear Mr. Huffman:

You have requested an opinion as to whether House File 2472 (1983 Session), an act providing for the enforcement of certain alcoholic liquor and beer laws, is unconstitutional, in part, as a violation of Article III, § 29, of the Iowa Constitution. Specifically, you question whether section 7 of the act, altering the jurisdiction of magistrates, is sufficiently expressed in the title.

House File 2472 was introduced by the House Committee on State Government on March 6, 1984. The bill was passed in the House on March 9, 1984, and sent to the Senate on March 13, 1984. The Senate, on March 29, 1984, passed an amended version of the bill, which was approved by the House. The bill was enacted on April 20, 1984, the last day of the 1984 session. The Governor signed the bill on May 14, 1984, and the bill became effective July 1, 1984. House File 2472, as passed, is entitled:

An act relating to [1] the transportation of open containers of alcoholic beverages and beer, [2] the hours of sale of alcoholic beverages and beer, [3] the notification of parents or legal guardians of a child that appears before the court for a violation of section 123.47, [4] the motor vehicle license or nonoperator's identification card issued to a person under nineteen years of age, and [5] providing penalties. [Numbers inserted]

Iowa Const. Art. III, § 29, provides:

Every act shall embrace but one subject, and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title.

The provision can be divided into three categories: the one subject rule, sufficiency of title, and separability.

1. ONE SUBJECT RULE

The one subject rule refers to the content of the legislation and limits it to "one subject, and matters properly connected therewith. . . ." Stated in the alternative, the constitutional requirement of one subject prohibits legislative duplicity of subjects. The purpose of the one subject rule is to prevent political "logrolling" which could result from attaching unrelated and unpopular riders to bills certain of passage. Long v. Board of Supervisors of Benton County, 258 Iowa 1278, 1284, 142 N.W.2d 378, 382 (1966). Your request does not question whether this requirement has been met.¹

¹ For the applicable law in determining whether an act complies with the one subject requirement, see Long, 258 Iowa at 1282-83, 142 N.W.2d at 381-82. An example of legislation being upheld as part of one subject is State v. Bahl, 242 N.W.2d 298 (Iowa 1976) (held an act relating to the flight of aircraft over state lands and waters and prohibiting the operation of aircraft while intoxicated embraced but one subject, the proscription of the dangerous operation of aircraft -- the "common

2. SUFFICIENCY OF TITLE

The constitutional provision also provides that the subject of the act must be expressed in its title. Certain well established and noncontroverted principles regarding the sufficiency of title are succinctly stated in State v. Talerico, 227 Iowa 1315, 290 N.W. 660 (1940). That landmark case, frequently cited, states:

The decisions involving the sufficiency of titles to legislative enactments lay down certain general rules. It is held this constitutional provision [Art. III, § 29] should be liberally construed so as to embrace all matters reasonably connected with the title and which are not incongruous thereto or have no connection or relation therewith. It was designed to prevent surprise in legislation, by having matter of one nature embraced in a bill whose title expressed another. However, the title need not be an index or epitome of the act or its details. The subject of the bill need not be specifically and exactly expressed in the title. It is sufficient if all the provisions relate to the one subject indicated in the title and are parts of it or incidental to it or reasonably connected with it or in some reasonable sense auxiliary to the subject of the statute. . . . [Emphasis added]

State v. Talerico, 227 Iowa at 1322, 290 N.W. at 663.

Two of the principles stated in State v. Talerico require elaboration. First, the constitutional requirement as to the sufficiency of the title is to be liberally construed in favor of legislation because of the presumption of constitutionality. A statute will not be declared unconstitutional unless it "clearly, palpably, and without doubt infringes the constitution." Lee Enterprises, Inc. v. Iowa State Tax Comm., 162 N.W.2d 730, 737 (Iowa 1968). Every reasonable doubt is to be resolved in favor of constitutionality. Id. Certainly, we are aware that

n.1 continued

denominator." See also 1976 Op.Att'yGen. 292. Whole recodifications have been upheld as embracing but one subject: code revision. Rains v. First National Bank of Fairfield, 201 Iowa 140, 206 N.W. 821 (1926).

declaring an act of the legislature unconstitutional is a "delicate function" and to be avoided if possible. Miller v. Schuster, 277 Iowa 1005, 289 N.W. 702 (1940); 1976 Op.Att'yGen. 149, 150; 1968 Op.Att'yGen. 132, 139. The second principle we emphasize concerns the purpose of the sufficiency of title requirement. The primary purpose of the constitutional requirement that the subject matter be expressed in the title of the act is to prevent surprise and fraud upon the people and the legislature. Long, 258 Iowa at 1283, 142 N.W.2d at 381. In determining the sufficiency of a title, courts examine whether anyone reading the title of an act could reasonably assume that the reader would be apprised of all of its material provisions. See Hines v. Illinois Central Gulf Railroad, 330 N.W.2d 284, 290 (Iowa 1983); State v. Nickelson, 169 N.W.2d 832, 836 (Iowa 1969); 1978 Op.Att'yGen. 144, 145.

In examining whether a provision is expressed in an act's title, the court examines closely an omission where the title is drafted with specific language. For instance, in In Re Breen, 207 Iowa 65, 222 N.W. 426 (1928), the Iowa Supreme Court held a provision for the suspension of the license of a physician because of a conviction of the federal statutes related to narcotics unconstitutional as not expressed in a title which professed to amend, revise, and codify statutes relating to the sale and transportation of intoxicating liquors. The case involved a title drafted with specific language. The court, in State v. Nickelson, supra, held unconstitutional a provision which prohibited and proscribed punishment for the disposal of collateral with the intent to defraud. According to the court, the lengthy and comprehensive title to the act, which concerned the Uniform Commercial Code, contained nothing indicating criminal responsibility and thus, the criminal provision was not sufficiently expressed in the title.

The court also examines, where a provision is not expressed in an act's title, whether the provision is germane to the subject expressed in the title. For instance, in Long, the court held a section providing that courthouses be open for business on Saturday mornings was related and germane to the expressed subject of compensation of county officers. The court noted that which "it might have been better to have stated the act related to duties and salaries of county officers," nevertheless the court found that county officers' duties were sufficiently tied to compensation so that the title was "sufficient, and reasonably would not mislead the legislators or the public." In Stanley v. Southwestern Comm. College Merged Area, Etc., 184 N.W.2d 29 (Iowa 1971), the court held a provision authorizing the issuance of bonds and the imposition of a tax to be germane to "an act to provide for the establishment and operation of area vocational schools and area community colleges." The court observed that

the power to tax and issue bonds was inherent in authorizing an educational facility.

Applying the relevant principles, we do not think § 7, except as to the addition of § 123.47 violations to magistrates' jurisdiction, is sufficiently expressed in the act's title. The title of H.F. 2472 is very specific, referencing provisions for the enforcement of alcoholic liquor and beer laws, including: the open container law, the hours of sale, parental and guardian notification for § 123.47 violations, the issuance of non-operator's identification cards,² and provision for penalties. Section 7 deletes the jurisdiction of magistrates over portions of the criminal proceedings in § 123.47 and 123.49(2)(h) (sale of alcoholic liquor or beer to persons under legal age).

Section 7 alters the jurisdiction of magistrates over, inter alia, proceedings concerning violations of §§ 321.281 and 123.49(2)(h). A review of §§ 321.281 and 123.49(2)(h) reveals that alteration of the jurisdiction for a violation of either section is not sufficiently expressed in the act's title. Section 321.281 prohibits the operation of a motor vehicle upon Iowa's public highways in an intoxicated or drugged condition. Section 123.49(2)(h) prohibits a licensee or permittee from providing alcoholic liquor or beer to any person under legal age. A violation of § 123.49(2)(h) constitutes a simple misdemeanor, Iowa Code § 123.50(1) (1983), and subjects the violator's license or permit to a suspension or revocation, Iowa Code § 123.50(3) (1983), while the penalty for a § 321.281 violation ranges from a serious misdemeanor to a class "D" felony depending on the number of offenses. Iowa Code § 321.281(2) (1983). No mention is made in the title of H.F. 2472 that the act alters the jurisdiction for violations of either §§ 321.281 or 123.49(2)(h). Neither does the act's title make express reference to the alteration of either section, as neither section is amended by the act. Nor does the title expressly refer to drunk driving or the sale of alcoholic liquor or beer to individuals under 19 years of age. Clearly, the alteration of magistrates' jurisdiction to hear

² The manner in which the title was drafted for final passage is evidenced by reference in the title to a provision for "the motor vehicle license or nonoperator's identification card issued to a person under nineteen years of age." That provision, albeit a part of the original bill, was removed from the act and incorporated in House File 2486 (1983 Session) (the drunk driving bill). The fact that the title contains matters outside of the subject of the act, however, does not invalidate the act. Knorr v. Beardsley, 240 Iowa 828, 38 N.W.2d 236 (1949).

§§ 321.281 and 123.49(2)(h) violations is not expressly referred to in the title of H.F. 2472. Similarly, alteration of magistrate's jurisdiction for such violations is not reasonably connected to the subject expressed in the act's title. While the title does reference the provision for penalties, H.F. 2472 does not alter or address the penalties for §§ 321.281 or 123.49(2)(h) violations. None of the other provisions expressed in the title, supra at 5, are reasonably connected to those portions of section 7. Moreover, the title to H.F. 2472 does not contain anything from which one, by reading the title, would know or have reason to think that there was any provision in the act affecting magistrates' jurisdiction by eliminating their authority to hear certain proceedings in drunk driving cases under § 321.281, while expanding their domain to include offenses under § 123.49(2)(h). Anyone reading the title could reasonably assume that no such change was contained therein. The sufficiency of title requirement of Art. III, § 29, is intended to avoid that kind of problem.

A contrary result is dictated as to the title's sufficiency to include section 7's expansion of magistrates' jurisdiction of § 123.47 violations by a review of that section. Section 123.47 prohibits the provision of alcoholic liquor or beer to any person under legal age by any person. Although similar to § 123.47(2)(h), § 123.49 is general in its coverage, while § 123.49(2)(h) is applicable only to licensees and permittees. A violation of § 123.47 constitutes a serious misdemeanor, subject to minimum and maximum fines, for any non-licensee or non-permittee who has attained the age of eighteen, and a simple misdemeanor for minors.³ Iowa Code §§ 123.50(4), as added by H.F. 2472, § 4, and 123.90. Noteworthy is the fact that that penalty is provided for in § 4 of H.F. 2472. Provision for penalties is expressed in the act's title. The legislature, in an effort to assure that magistrates retained jurisdiction to hear § 123.47 violations, enacted § 7 of H.F. 2472. Section 7, as it relates to the jurisdiction for § 123.47 violations, reflects an effort to coordinate the jurisdiction with the penalty provision. Thus, the provision in § 7 as to the jurisdiction of § 123.47 violations is reasonably connected to the provision of penalties, as expressed in the title. Cer-

³ Formerly, a violation of § 123.47 constituted a misdemeanor, except for any person under legal age who was guilty of a simple misdemeanor. Iowa Code § 123.90 (1983). The effect of the recent legislation, therefore, was to increase the penalty of § 123.47 violators, age eighteen to nineteen, from a simple to a serious misdemeanor.

tainly, the connection between the jurisdiction of § 123.47 violations and the increase in the penalty for a violation of the same section is as close as was the connection in Long, supra at 5, between a provision for courthouse Saturday office hours and county officers' salaries, the subject expressed in the title. The finding of a reasonable connection between the applicable provision and the subject expressed in the title makes moot an examination as to whether the provision itself is expressed in the act's title. Finally, we observe that anyone reading the title to H.F. 2472, noting that it provided for penalties, could reasonably assume that the act alters the jurisdiction for the particular offense affected. Thus, the provision for the jurisdiction of § 123.47 violations in § 7 is sufficiently expressed in the act's title.

Accordingly, it is our opinion that H.F. 2472, an act providing for the enforcement of certain alcoholic liquor and beer laws, is, in part, unconstitutional as a violation of Art. III, § 29, of the Iowa Constitution. Section 7 of the act, as it pertains to the jurisdiction of magistrates to hear §§ 321.281 and 123.49(2)(h) violations, is not sufficiently expressed in the title.

3. SEPARABILITY

The conclusion that H.F. 2472 § 7 is unconstitutional as a violation of Art. III, § 29 leads to the final aspect of this constitutional provision: separability. Article III, § 29 provides that legislation containing a provision insufficiently expressed in the title is "void only as to so much thereof as shall not be expressed in the title. Thus, the remainder of H.F. 2472 would remain unaffected by the conclusion that § 7 of the act is unconstitutional as not sufficiently expressed in the title.

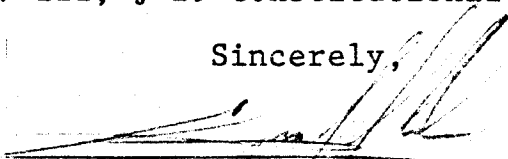
In order to avoid constitutional challenges, we urge the use of titles expressed in general language. Generality of wording is not an objection to the sufficiency of a title if it is not so general as to be meaningless or deceptive. 1A Sutherland on Statutory Construction, § 18.10 (Sands 4th ed. 1972). In fact, generality is more desirable because it provides a more adequate warning concerning the subject matter, in addition to reflecting more satisfactorily the policy involved in the statute. Id. at § 18.09.

If the legislature perceives an advantage to specificity, such as the enhancement of germaneness objections, we suggest the inclusion of language at the outset of a title expressing, in general terms, the subject matter of the legislation. For example, H.F. 2472 could have been drafted as such:

An act relating to the enforcement of certain alcoholic liquor and beer laws by prohibiting the transportation of open containers of alcoholic liquor and beer, expanding the hours of sale of alcoholic liquor and beer, requiring the notification of parents or legal guardians of a child that appears before a court for a violation of section 123.47, altering the jurisdiction of magistrates, and providing penalties.

The combination of general and specific language in a title will better survive an Art. III, § 29 constitutional challenge.⁴

Sincerely,



LYNN M. WALDING
Assistant Attorney General

LMW/cjc

⁴ The two constitutional requirements of Art. III, § 29 -- the one subject rule and sufficiency of title -- are often at odds in drafting titles. If the drafter is too general in writing a title, the bill may be subject to a challenge as to the sufficiency of title. Conversely, a title too specifically drafted may be subject to a one subject rule objection. A title combining general and specific language will resolve this conflict.

HOUSE FILE 2472

AN ACT

RELATING TO THE TRANSPORTATION OF OPEN CONTAINERS OF ALCOHOLIC BEVERAGES AND BEER, THE HOURS OF SALE OF ALCOHOLIC BEVERAGES AND BEER, THE NOTIFICATION OF PARENTS OR LEGAL GUARDIANS OF A CHILD THAT APPEARS BEFORE THE COURT FOR A VIOLATION OF SECTION 123.47, THE MOTOR VEHICLE LICENSE OR NONOPERATOR'S IDENTIFICATION CARD ISSUED TO A PERSON UNDER NINETEEN YEARS OF AGE, AND PROVIDING PENALTIES.

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

Section 1. Section 123.28, Code 1983, is amended to read as follows:

123.28 TRANSPORTATION PERMITTED. It ~~shall-be~~ is lawful to transport, carry, or convey alcoholic liquors from the place of purchase by the department to any a state warehouse, store, or depot established by the department or from one such place to another and, when so permitted by this chapter, it ~~shall-be~~ is lawful for any a common carrier or other person to transport, carry, or convey alcoholic liquor sold by a vendor from a state warehouse, store, depot or point of purchase by the state to any place to which such the liquor may be lawfully delivered under this chapter. Notwithstanding section 321.230, sections 321.225 and 321.226 do not apply to department employees in the regular course of their employment. A common carrier or other person shall not break or open or allow to be broken or opened any a container or package containing alcoholic liquor or use or drink or allow to be used or drunk any alcoholic liquor while it is being transported or conveyed, but this section ~~shall~~ does not prohibit a private person from transporting individual bottles or containers of alcoholic liquor exempted pursuant to section 123.22 and individual bottles or containers bearing the

identifying mark prescribed in section 123.26 which have been opened previous to the commencement of ~~such the~~ transportation. This section ~~shall~~ does not affect the right of any a special permit or liquor control license holder to purchase, possess, or transport alcoholic liquors subject to the provisions of this chapter.

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

Sec. 2. Section 123.36, subsection 6, Code Supplement 1983, is amended to read as follows:

6. Any club, hotel, motel, or commercial establishment holding a liquor control license for whom the sale of goods and services other than alcoholic liquor or beer constitutes fifty percent or more of the gross receipts from the licensed premises, subject to the provisions of section 123.49, subsection 2, paragraph "b", may sell and dispense alcoholic liquor to patrons on Sunday for consumption on the premises

only, and beer for consumption on or off the premises between the hours of ~~noon~~ ten a.m. and ~~ten-p-m-~~ twelve midnight on Sunday. For the privilege of selling beer and alcoholic liquor on the premises on Sunday the liquor control license fee of the applicant shall be increased by twenty percent of the regular fee prescribed for the license pursuant to this section, and the privilege shall be noted on the liquor control license. The department shall prescribe the nature and the character of the evidence which shall be required of the applicant under this subsection.

Sec. 3. Section 123.49, subsection 2, paragraph b, Code 1983, is amended to read as follows:

b. Sell or dispense any alcoholic beverage or beer on the premises covered by the license or permit, or permit ~~the~~ its consumption thereon between the hours of two a.m. and six a.m. on any a weekday, and between the hours of two a.m. on Sunday and six a.m. on the following Monday, however, a holder of a liquor control license or retail beer permit granted the privilege of selling alcoholic liquor or beer on Sunday may sell or dispense ~~such~~ alcoholic liquor or beer between the hours of ~~noon~~ ten a.m. and ~~ten-p-m-~~ twelve midnight on Sunday.

Sec. 4. Section 123.50, Code 1983, is amended by adding the following new subsection:

NEW SUBSECTION. 4. A person, other than a licensee or permittee or a minor, who violates section 123.47 is guilty of a serious misdemeanor punishable by a minimum fine of one hundred dollars for a first offense, two hundred and fifty dollars for a second offense, and five hundred dollars for a third and subsequent offense, and a maximum fine for any offense of not more than one thousand dollars.

Sec. 5. Section 123.134, subsection 5, Code 1983, is amended to read as follows:

5. Any club, hotel, motel, or commercial establishment holding a class "B" beer permit for whom the sale of goods and services other than beer constitutes fifty percent or

more of the gross receipts from the licensed premises, subject to the provisions of section 123.49, subsection 2, paragraph "b", may sell and dispense beer to patrons on Sunday for consumption on the premises and for consumption of beer off the premises between the hours of ~~noon~~ 10 a.m. and ~~ten-p-m-~~ twelve midnight on Sunday. Any class "C" beer permittee may sell beer for consumption off the premises between the hours of ~~noon~~ ten a.m. and ~~ten-p-m-~~ twelve midnight on Sunday. For the privilege of selling beer on Sunday the beer permit fees of the applicant shall be increased by twenty percent of the regular fees prescribed for the permit pursuant to this section and the privilege shall be noted on the beer permit. The department shall prescribe the nature and character of the evidence which shall be required of the applicant under this subsection.

Sec. 6. Section 232.8, subsection 1, unnumbered paragraph 2, Code 1983, is amended to read as follows:

Violations by a child of provisions of chapters 106, 106A, 109, 109A, 110, 110A, 110B, 111, 321, or 321G which would be simple misdemeanors if committed by an adult, violations of county or municipal curfew or traffic ordinances, and violations by a child of the provisions of section 123.47, are excluded from the jurisdiction of the juvenile court and shall be prosecuted as simple misdemeanors as provided by law. The court may advise appropriate juvenile authorities and may refer violations of section 123.47 to the juvenile court when there is reason to believe that the child regularly abuses alcohol and may be in need of treatment. The court shall notify the parents or legal guardians of a child that appears before it for a violation of section 123.47.

Sec. 7. Section 602.6405, subsection 1, Code Supplement 1983, is amended to read as follows:

1. Magistrates have jurisdiction of simple misdemeanors, including traffic and ordinance violations, and preliminary hearings, search warrant proceedings, and small claims. They also have jurisdiction to exercise the powers specified in

sections 644.2 and 644.12, and 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 also have jurisdiction over violations of section 123.47 and section 123.49, subsection 2, paragraph "h".

DONALD D. AVENSON
Speaker of the House

CHARLES P. MILLER
President Pro Tempore of the
Senate

I hereby certify that this bill originated in the House and is known as House File 2472, Seventieth General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved May 14, 1984

TERRY E. BRANSTAD
Governor

H.F. 2472