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Judiciary & Law Enforcement
Re. Pass 5/2 (p. 2036)

HOUSE FILE 2493
BY NORLAND and STROMER

Passed House, Date 5-2-86 (p. 2040) Passed Senate, Date 5-2-86 (p. 1598)
Vote: Ayes 95 Nays 3 Vote: Ayes 33 Nays 12
Approved May 27

A BILL FOR

1 An Act relating to criminal penalties arising from the operation
2 of a motor vehicles.

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

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HF 2493

1 Section 1. NEW SECTION. 321J.1 DEFINITIONS.

2 As used in this chapter unless the context otherwise
3 requires:

4 1. "Alcohol concentration" means the number of grams of
5 alcohol per any of the following:

- 6 a. One hundred milliliters of blood.
- 7 b. Two hundred ten liters of breath.
- 8 c. Sixty-seven milliliters of urine.

9 2. "Alcoholic beverage" includes alcohol, wine, spirits,
10 beer, or any other beverage which contains ethyl alcohol and
11 is fit for human consumption.

12 3. "Arrest" includes but is not limited to taking into
13 custody pursuant to section 232.19.

14 4. "Department" means the state department of
15 transportation.

16 5. "Director" means the director of transportation or the
17 director's designee.

18 6. "Motor vehicle license" means any license or permit
19 issued to a person to operate a motor vehicle in this state,
20 including but not limited to an operator, chauffeur, or
21 motorized bicycle license and an instruction or temporary
22 permit.

23 7. "Peace officer" means:

- 24 a. A member of the highway patrol.
- 25 b. A police officer under civil service as provided in
26 chapter 400.
- 27 c. A sheriff.
- 28 d. A regular deputy sheriff who has had formal police
29 training.

30 e. Any other law enforcement officer who has
31 satisfactorily completed an approved course relating to motor
32 vehicle operators under the influence of alcoholic beverages
33 at the Iowa law enforcement academy or a law enforcement
34 training program approved by the department of public safety.

35 8. "Serious injury" means a bodily injury which creates a

1 substantial risk of death, or which causes serious permanent
2 disfigurement, or which causes protracted loss or impairment
3 of the function of any bodily organ or major bodily member, or
4 which causes the loss of any bodily member.

5 Sec. 2. NEW SECTION. 321J.2 OPERATING WHILE UNDER THE
6 INFLUENCE OF ALCOHOL OR A DRUG OR WHILE HAVING AN ALCOHOL
7 CONCENTRATION OF .10 OR MORE. (OWI)

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

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

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

15 2. A person who violates this section commits:

16 a. A serious misdemeanor for the first offense and shall
17 be imprisoned in the county jail for not less than forty-eight
18 hours to be served as ordered by the court, less credit for
19 any time the person was confined in a jail or detention
20 facility following arrest, and assessed a fine of not less
21 than five hundred dollars nor more than one thousand dollars.
22 As an alternative to a portion or all of the fine, the court
23 may order the person to perform not more than two hundred
24 hours of unpaid community service. The court may accommodate
25 the sentence to the work schedule of the defendant.

26 b. An aggravated misdemeanor for a second offense and
27 shall be imprisoned in the county jail or community-based
28 correctional facility not less than seven days, which minimum
29 term cannot be suspended notwithstanding section 901.5,
30 subsection 3 and section 907.3, subsection 2, and assessed a
31 fine of not less than seven hundred fifty dollars.

32 c. A class "D" felony for a third offense and each
33 subsequent offense and shall be imprisoned in the county jail
34 or community-based correctional facility for not less than
35 thirty days, which minimum term cannot be suspended

1 notwithstanding section 901.5, subsection 3, and section
2 907.3, subsection 2, and assessed a fine of not less than
3 seven hundred fifty dollars.

4 3. No conviction for, deferred judgment for, or plea of
5 guilty to, a violation of this section which occurred more
6 than six years prior to the date of the violation charged
7 shall be considered in determining that the violation charged
8 is a second, third, or subsequent offense. For the purpose of
9 determining if a violation charged is a second, third, or
10 subsequent offense, deferred judgments pursuant to section
11 907.3 for violations of this section and convictions or the
12 equivalent of deferred judgments for violations in any other
13 states under statutes substantially corresponding to this
14 section shall be counted as previous offenses. The courts
15 shall judicially notice the statutes of other states which
16 define offenses substantially equivalent to the one defined in
17 this section and can therefore be considered corresponding
18 statutes. Each previous violation shall be considered a
19 separate previous offense without regard to whether each was
20 complete as to commission and conviction or deferral of
21 judgment following or prior to any other previous violation.

22 4. A person shall not be convicted and sentenced for more
23 than one violation of this section if the violation is shown
24 to have been committed by either or both of the means
25 described in subsection 1 in the same occurrence.

26 5. The clerk of court shall immediately certify to the
27 department a true copy of each order entered with respect to
28 deferral of judgment, deferral of sentence or pronouncement of
29 judgment and sentence for a defendant under this section.

30 6. This section does not apply to a person operating a
31 motor vehicle while under the influence of a drug if the
32 substance was prescribed for the person and was taken under
33 the prescription and in accordance with the directions of a
34 medical practitioner as defined in section 155.3, subsection
35 11, if there is no evidence of the consumption of alcohol and

1 the medical practitioner had not directed the person to
2 refrain from operating a motor vehicle.

3 7. In any prosecution under this section, evidence of the
4 results of analysis of a specimen of the defendant's blood,
5 breath, or urine is admissible upon proof of a proper
6 foundation. The alcohol concentration established by the
7 results of an analysis of a specimen of the defendant's blood,
8 breath, or urine withdrawn within two hours after the
9 defendant was driving or in physical control of a motor
10 vehicle is presumed to be the alcohol concentration at the
11 time of driving or being in physical control of the motor
12 vehicle.

13 8. The court shall order a defendant convicted of or
14 receiving a deferred judgment for a violation of this section
15 to make restitution, in an amount not to exceed two thousand
16 dollars, for damages resulting directly from the violation.
17 An amount paid pursuant to this restitution order shall be
18 credited toward any adverse judgment in a subsequent civil
19 proceeding arising from the same occurrence. However, other
20 than establishing a credit, a restitution proceeding pursuant
21 to this section shall not be given evidentiary or preclusive
22 effect in a subsequent civil proceeding arising from the same
23 occurrence.

24 9. In any prosecution under this section, the results of a
25 chemical test may not be used to prove a violation of
26 paragraph "b" of subsection 1 if the alcohol concentration
27 indicated by the chemical test minus the established margin of
28 error inherent in the device or method used to conduct the
29 chemical test does not equal an alcohol concentration of .10
30 or more.

31 Sec. 3. NEW SECTION. 321J.3 COURT ORDERED SUBSTANCE
32 ABUSE EVALUATION OR TREATMENT.

33 1. On a conviction for a violation of section 321J.2, the
34 court may order the defendant to attend a course for drinking
35 drivers under section 321J.23. If the defendant submitted to

1 a chemical test on arrest for the violation of section 321J.2
2 and the test indicated an alcohol concentration of .20 or
3 higher, the court shall order the defendant, on conviction, to
4 undergo a substance abuse evaluation and the court may order
5 the defendant to follow the recommendations proposed in the
6 substance abuse evaluation for appropriate substance abuse
7 treatment for the defendant. Court ordered substance abuse
8 treatment is subject to the periodic reporting requirements of
9 section 125.86. If a defendant is committed by the court to a
10 substance abuse treatment facility, the administrator of the
11 facility shall report to the court when it is determined that
12 the defendant has received the maximum benefit of treatment at
13 the facility and the defendant shall be released from the
14 facility. The time for which the defendant is committed for
15 treatment shall be credited against the defendant's sentence.
16 The court may prescribe the length of time for the evaluation
17 and treatment or it may request that the area school
18 conducting the course for drinking drivers which the person is
19 ordered to attend or the treatment program to which the person
20 is committed immediately report to the court when the person
21 has received maximum benefit from the course for drinking
22 drivers or treatment program or has recovered from the
23 person's addiction, dependency, or tendency to chronically
24 abuse alcohol or drugs. A person committed under this section
25 who does not possess sufficient income or estate to make
26 payment of the costs of the treatment in whole or in part
27 shall be considered a state patient and the costs of treatment
28 shall be paid as provided in section 125.44. A defendant who
29 fails to carry out the order of the court or who fails to
30 successfully complete or attend a course for drinking drivers
31 or an ordered substance abuse treatment program shall be
32 confined in the county jail for twenty days in addition to any
33 other imprisonment ordered by the court or may be ordered to
34 perform unpaid community service work, and shall be placed on
35 probation for one year with a violation of this probation

1 punishable as contempt of court.

2 2. As a condition of a suspended sentence or portion of
3 sentence for a second, third, or subsequent offense in
4 violation of section 321J.2, the court upon hearing may commit
5 the defendant for inpatient treatment of alcoholism or drug
6 addiction or dependency to any hospital, institution, or
7 community correctional facility in Iowa providing such
8 treatment. The time for which the defendant is committed for
9 treatment shall be credited against the defendant's sentence.
10 The court may prescribe the length of time for the evaluation
11 and treatment or it may request that the hospital to which the
12 person is committed immediately report to the court when the
13 person has received maximum benefit from the program of the
14 hospital or institution or has recovered from the person's
15 addiction, dependency, or tendency to chronically abuse
16 alcohol or drugs. A person committed under this section who
17 does not possess sufficient income or estate to make payment
18 of the costs of the treatment in whole or in part shall be
19 considered a state patient and the costs of treatment shall be
20 paid as provided in section 125.44.

21 Sec. 4. NEW SECTION. 321J.4 REVOCATION OF MOTOR VEHICLE
22 LICENSE ON CONVICTION OR COURT ORDER.

23 1. If a defendant is convicted of a violation of section
24 321J.2 and the defendant's motor vehicle license or
25 nonresident operating privilege has not been revoked under
26 section 321J.9 or 321J.12 for the occurrence from which the
27 arrest arose, the department shall revoke the defendant's
28 license or nonresident operating privilege for one hundred
29 eighty days if the defendant has had no previous conviction
30 under section 321J.2 or revocation under section 321J.9 or
31 321J.12 within the previous six years and for one year if the
32 defendant has had one or more previous convictions or
33 revocations under those sections within the previous six
34 years.

35 2. If the court defers judgment pursuant to section 907.3

1 for a violation of section 321J.2, the court shall order the
2 department to revoke the defendant's motor vehicle license
3 drive or nonresident operating privilege for a period of not
4 less than thirty days nor more than ninety days if the
5 defendant's motor vehicle license or nonresident operating
6 privilege has not been revoked under section 321J.9 or 321J.12
7 for the occurrence from which the arrest arose. The court
8 shall immediately require the defendant to surrender to it all
9 Iowa licenses or permits held by the defendant, which the
10 court shall forward to the department with a copy of the order
11 deferring judgment.

12 3. a. Upon a plea or verdict of guilty of a third or
13 subsequent violation of section 321J.2, the court shall order
14 the department to revoke the defendant's motor vehicle license
15 or nonresident operating privilege for a period of six years.
16 The court shall require the defendant to surrender to it all
17 Iowa licenses or permits held by the defendant, which the
18 court shall forward to the department with a copy of the order
19 for revocation.

20 b. After two years from the date of the order for
21 revocation, the defendant may apply to the court for
22 restoration of the defendant's eligibility for a motor vehicle
23 license. The application may be granted only if all of the
24 following are shown by the defendant by a preponderance of the
25 evidence:

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

31 (2) The defendant has not been convicted, since the date
32 of the revocation order, of any subsequent violations of
33 section 321J.2 or 123.46, or any comparable city or county
34 ordinance, and the defendant has not, since the date of the
35 revocation order, submitted to a chemical test under this

1 chapter that indicated an alcohol concentration as defined in
2 section 321J.1 of .10 or more, or refused to submit to
3 chemical testing under this chapter.

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

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

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

13 4. Upon a plea or verdict of guilty of a violation of
14 section 321J.2 which involved a personal injury, the court
15 shall determine in open court, from consideration of the
16 information in the file and any other evidence the parties may
17 submit, whether a serious injury was sustained by any person
18 other than the defendant and, if so, whether the defendant's
19 conduct in violation of section 321J.2 caused the serious
20 injury. If the court so determines, the court shall order the
21 department to revoke the defendant's motor vehicle license or
22 nonresident operating privilege for a period of one year in
23 addition to any other period of suspension or revocation. The
24 defendant shall surrender to the court any Iowa license or
25 permit and the court shall forward it to the department with a
26 copy of the order for revocation.

27 5. Upon a plea or verdict of guilty of a violation of
28 section 321J.2 which involved a death, the court shall
29 determine in open court, from consideration of the information
30 in the file and any other evidence the parties may submit,
31 whether a death occurred and, if so, whether the defendant's
32 conduct in violation of section 321J.2 caused the death. If
33 the court so determines, the court shall order the department
34 to revoke the defendant's motor vehicle license or nonresident
35 operating privilege for a period of six years. The defendant

1 shall surrender to the court any Iowa license or permit and
2 the court shall forward it to the department with a copy of
3 the order for revocation.

4 6. If a license or permit to operate a motor vehicle is
5 revoked or denied under this section or section 321J.9 or
6 321J.12, the period of revocation or denial shall be the
7 period provided for such a revocation or until the defendant
8 reaches the age of eighteen whichever period is longer.

9 Sec. 5. NEW SECTION. 321J.5 PRELIMINARY SCREENING TEST.

10 When a peace officer has reasonable grounds to believe that
11 a motor vehicle operator may be violating or has violated
12 section 321J.2, or the operator has been involved in a motor
13 vehicle collision resulting in injury or death, the peace
14 officer may request the operator to provide a sample of the
15 operator's breath for a preliminary screening test using a
16 device approved by the commissioner of public safety for that
17 purpose. The results of this preliminary screening test may
18 be used for the purpose of deciding whether an arrest should
19 be made and whether to request a chemical test authorized in
20 this chapter, but shall not be used in any court action except
21 to prove that a chemical test was properly requested of a
22 person pursuant to this chapter.

23 Sec. 6. NEW SECTION. 321J.6 IMPLIED CONSENT TO TEST.

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

1 conditions exist:

2 a. A peace officer has lawfully placed the person under
3 arrest for violation of section 321J.2.

4 b. The person has been involved in a motor vehicle
5 accident or collision resulting in personal injury or death.

6 c. The person has refused to take a preliminary breath
7 screening test provided by this chapter.

8 d. The preliminary breath screening test was administered
9 and it indicated an alcohol concentration as defined in
10 section 321J.1 of .10 or more.

11 e. The preliminary breath screening test was administered
12 and it indicated an alcohol concentration of less than .10 and
13 the peace officer has reasonable grounds to believe that the
14 person was under the influence of a drug other than alcohol or
15 a combination of alcohol and another drug.

16 2. The peace officer shall determine which of the three
17 substances, breath, blood, or urine, shall be tested. Refusal
18 to submit to a chemical test of urine or breath is deemed a
19 refusal to submit, and section 321J.9 applies. A refusal to
20 submit to a chemical test of blood is not deemed a refusal to
21 submit, but in that case, the peace officer shall then
22 determine which one of the other two substances shall be
23 tested and shall offer the test. If the peace officer fails
24 to offer a test within two hours after the preliminary
25 screening test is administered or refused or the arrest is
26 made, whichever occurs first, a test is not required, and
27 there shall be no revocation under section 321J.9.

28 3. Notwithstanding subsection 2, if the peace officer has
29 reasonable grounds to believe that the person was under the
30 influence of a drug other than alcohol or a combination of
31 alcohol and another drug, a urine test may be required even
32 after a blood or breath test has been administered. Section
33 321J.9 applies to a refusal to submit to a chemical test of
34 urine requested under this subsection.

35 Sec. 7. NEW SECTION. 321J.7 DEAD OR UNCONSCIOUS PERSONS.

1 A person who is dead, unconscious, or otherwise in a
2 condition rendering the person incapable of consent or refusal
3 is deemed not to have withdrawn the consent provided by
4 section 321J.6, and the test may be given if a licensed
5 physician certifies in advance of the test that the person is
6 dead, unconscious, or otherwise in a condition rendering that
7 person incapable of consent or refusal.

8 Sec. 8. NEW SECTION. 321J.8 STATEMENT OF OFFICER.

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

11 1. If the person refuses to submit to the test, the
12 person's license or operating privilege will be revoked by the
13 department for the applicable period under section 321J.9.

14 2. If the person submits to the test and the results
15 indicate an alcohol concentration as defined in section 321J.1
16 of .10 or more, the person's license or operating privilege
17 will be revoked by the department for the applicable period
18 under section 321J.12.

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

21 Sec. 9. NEW SECTION. 321J.9 REFUSAL TO SUBMIT --
22 REVOCATION.

23 If a person refuses to submit to the chemical testing, a
24 test shall not be given, but the department, upon the receipt
25 of the peace officer's certification, subject to penalty for
26 perjury, that the officer had reasonable grounds to believe
27 the person to have been operating a motor vehicle in violation
28 of section 321J.2, that specified conditions existed for
29 chemical testing pursuant to section 321J.6, and that the
30 person refused to submit to the chemical testing, shall revoke
31 the person's motor vehicle license and any nonresident
32 operating privilege for a period of two hundred forty days if
33 the person has no previous revocation within the previous six
34 years under this chapter; and five hundred forty days if the
35 person has one or more previous revocations within the

1 previous six years under this chapter; or if the person is a
2 resident without a license or permit to operate a motor
3 vehicle in this state, the department shall deny to the person
4 the issuance of a license or permit for the same period a
5 license or permit would be revoked, subject to review as
6 provided in this chapter. The effective date of revocation
7 shall be twenty days after the department has mailed notice of
8 revocation to the person by certified mail or, on behalf of
9 the department, a peace officer offering or directing the
10 administration of a chemical test may serve immediate notice
11 of intention to revoke and of revocation on a person who
12 refuses to permit chemical testing. If the peace officer
13 serves that immediate notice, the peace officer shall take the
14 Iowa license or permit of the driver, if any, and issue a
15 temporary license effective for only twenty days. The peace
16 officer shall immediately send the person's license to the
17 department along with the officer's certificate indicating the
18 person's refusal to submit to chemical testing.

19 Sec. 10. NEW SECTION. 321J.10 TESTS PURSUANT TO
20 WARRANTS.

21 1. Refusal to consent to a test under section 321J.6 does
22 not prohibit the withdrawal of a specimen for chemical testing
23 pursuant to a search warrant issued in the investigation of a
24 suspected violation of section 707.5 if all of the following
25 grounds exist:

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

28 b. There are reasonable grounds to believe that one or
29 more of the persons whose driving may have been the proximate
30 cause of the accident was violating section 321J.2 at the time
31 of the accident.

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

35 3. Notwithstanding section 808.3, the issuance of a search

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

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

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

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

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

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

1 when the issuance was ordered.

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

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

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

15 4. Search warrants issued under this section shall
16 authorize and direct peace officers to secure the withdrawal
17 of blood specimens by medical personnel under section 321J.11.
18 Reasonable care shall be exercised to ensure the health and
19 safety of the persons from whom specimens are withdrawn in
20 execution of the warrants. If a person from whom a specimen
21 is to be withdrawn objects to the withdrawal of blood, and the
22 person is capable of giving a specimen of breath, and a direct
23 breath testing instrument is readily available, the warrant
24 may be executed by the withdrawal of a specimen of breath for
25 chemical testing.

26 5. The act of any person knowingly resisting or
27 obstructing the withdrawal of a specimen pursuant to a search
28 warrant issued under this section constitutes a contempt
29 punishable by a fine not exceeding one thousand dollars or
30 imprisonment in a county jail not exceeding one year or by
31 both such fine and imprisonment. Also, if the withdrawal of a
32 specimen is so resisted or obstructed, sections 321J.9 and
33 321J.16 apply.

34 6. Nonsubstantive variances between the contents of the
35 original and duplicate warrants shall not cause a warrant

1 issued under subsection 3 of this section to be considered
2 invalid.

3 7. Specimens obtained pursuant to warrants issued under
4 this section are not subject to disposition under section
5 808.9 or chapter 809.

6 8. Subsections 1 to 7 of this section do not apply where a
7 test may be administered under section 321J.7.

8 9. Medical personnel who use reasonable care and accepted
9 medical practices in withdrawing blood specimens are immune
10 from liability for their actions in complying with requests
11 made of them pursuant to search warrants or pursuant to
12 section 321J.11.

13 Sec. 11. NEW SECTION. 321J.11 TAKING SAMPLE FOR TEST.

14 Only a licensed physician, physician's assistant as defined
15 in section 148C.1, subsection 6, medical technologist, or
16 registered nurse, acting at the request of a peace officer,
17 may withdraw a specimen of blood for the purpose of
18 determining the alcohol concentration or the presence of
19 drugs. However, any peace officer, using devices and methods
20 approved by the commissioner of public safety, may take a
21 specimen of a person's breath or urine for the purpose of
22 determining the alcohol concentration or the presence of
23 drugs. Only new equipment kept under strictly sanitary and
24 sterile conditions shall be used for drawing blood.

25 The person may have an independent chemical test or tests
26 administered at the person's own expense in addition to any
27 administered at the direction of a peace officer. The failure
28 or inability of the person to obtain an independent chemical
29 test or tests does not preclude the admission of evidence of
30 the results of the test or tests administered at the direction
31 of the peace officer. Upon the request of the person who is
32 tested, the results of the test or tests administered at the
33 direction of the peace officer shall be made available to the
34 person.

35 Sec. 12. NEW SECTION. 321J.12 TEST RESULT REVOCATION.

1 Upon certification, subject to penalty for perjury, by the
2 peace officer that there existed reasonable grounds to believe
3 that the person had been operating a motor vehicle in
4 violation of section 321J.2, that there existed one or more of
5 the necessary conditions for chemical testing described in
6 section 321J.6, subsection 1, and that the person submitted to
7 chemical testing and the test results indicated an alcohol
8 concentration as defined in section 321J.1 of .10 or more, the
9 department shall revoke the person's motor vehicle license or
10 nonresident operating privilege for a period of one hundred
11 eighty days if the person has had no revocation within the
12 previous six years under this chapter, and one year if the
13 person has had one or more previous revocations within the
14 previous six years under this chapter.

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

22 If the peace officer serves that immediate notice, the
23 peace officer shall take the person's Iowa license or permit,
24 if any, and issue a temporary license valid only for twenty
25 days. The peace officer shall immediately send the person's
26 driver's license to the department along with the officer's
27 certificate indicating that the test results indicated an
28 alcohol concentration of .10 or more.

29 The results of a chemical test may not be used as the basis
30 for a revocation of a person's motor vehicle license or
31 nonresident operating privilege if the alcohol concentration
32 indicated by the chemical test minus the established margin of
33 error inherent in the device or method used to conduct the
34 chemical test does not equal an alcohol concentration of .10
35 or more.

1 Sec. 13. NEW SECTION. 321J.13 HEARING ON REVOCATION --
2 APPEAL.

3 1. Notice of revocation of a person's motor vehicle
4 license or operating privilege served pursuant to section
5 321J.9 or 321J.12 shall include a form accompanied by a
6 preaddressed envelope on which the person served may indicate
7 by a checkmark if the person wishes to request a temporary
8 restricted license only or if the person wishes a hearing to
9 contest the revocation. The form shall clearly state on its
10 face that the form must be completed and returned within
11 twenty days of receipt or the person's right to a hearing to
12 contest the revocation is foreclosed. The form shall also be
13 accompanied by a statement of the operation of and the
14 person's rights under this chapter.

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

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

31 b. Whether a test was administered and the test results
32 indicated an alcohol concentration as defined in section
33 321J.1 of .10 or more.

34 3. After the hearing the department shall order that the
35 revocation be either rescinded or sustained. In the event

1 that the revocation is sustained, the administrative hearing
2 officer who conducted the hearing has authority to issue a
3 temporary restricted license to the person whose motor vehicle
4 license or operating privilege was revoked. Upon receipt of
5 the decision of the department to sustain a revocation, the
6 person contesting the revocation shall have ten days to file a
7 request for review of the decision by the director. The
8 director or the director's designee shall review the decision
9 within fifteen days and shall either rescind or sustain the
10 revocation or order a new hearing. If the director orders a
11 new hearing, the department shall grant the person a new
12 hearing within thirty days of the director's order.

13 4. A person whose motor vehicle license or operating
14 privilege has been revoked under section 321J.9 or 321J.12 may
15 reopen a department hearing on the revocation if the person
16 submits a petition stating that new evidence has been
17 discovered which provides grounds for rescission of the
18 revocation, or if the person submits a petition stating that a
19 criminal action on a charge of a violation of section 321J.2
20 filed as a result of the same circumstances which resulted in
21 the revocation has resulted in a decision in which the court
22 has held that the peace officer did not have reasonable
23 grounds to believe that a violation of section 321J.2 had
24 occurred to support a request for or to administer a chemical
25 test or which has held the chemical test to be otherwise
26 inadmissible or invalid. Such a decision by the court is
27 binding on the department.

28 5. The department shall stay the revocation of a person's
29 motor vehicle license or operating privilege for the period
30 that the person is contesting the revocation under this
31 section or section 321J.14. If it is shown to the
32 satisfaction of the department that the new evidence is
33 material and that there were valid reasons for failure to
34 present it in the contested case proceeding before the depart-
35 ment.

1 6. If the department fails to comply with the time
2 limitations of this section regarding granting a hearing,
3 review by the director or director's designee, or granting a
4 new hearing, and if the request for a hearing or review by the
5 director was properly made under this section, the revocation
6 of the motor vehicle license or operating privilege of the
7 person who made the request for a hearing or review shall be
8 rescinded. This subsection shall not apply in those cases in
9 which a continuance to the hearing has been granted at the
10 request of either the person who requested the hearing or the
11 peace officer who requested or administered the chemical test.

12 Sec. 14. NEW SECTION. 321J.14 JUDICIAL REVIEW.

13 Judicial review of an action of the department may be
14 sought in accordance with the terms of the Iowa administrative
15 procedure Act, chapter 17A. Notwithstanding the terms of that
16 chapter, a petition for judicial review may be filed in the
17 district court in the county where the alleged events occurred
18 or in the county in which the administrative hearing was held.

19 Sec. 15. NEW SECTION. 321J.15 EVIDENCE IN ANY ACTION.

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

31 Sec. 16. NEW SECTION. 321J.16 PROOF OF REFUSAL
32 ADMISSIBLE.

33 If a person refuses to submit to a chemical test, proof of
34 refusal is admissible in any civil or criminal action or
35 proceeding arising out of acts alleged to have been committed

1 while the person was operating a motor vehicle in violation of
2 section 321J.2.

3 Sec. 17. NEW SECTION. 321J.17 CIVIL PENALTY -- SEPARATE
4 FUND -- REINSTATEMENT.

5 When the department revokes a person's motor vehicle
6 license or nonresident operating privilege under this chapter,
7 the department shall assess the person a civil penalty of one
8 hundred dollars. The money collected by the department under
9 this section shall be transmitted to the treasurer of state
10 who shall deposit the money in a separate fund dedicated to
11 and used for the purposes of chapter 912, and for the
12 operation of a missing person clearinghouse and domestic abuse
13 registry by the department of public safety. A temporary
14 restricted license shall not be issued or a license or permit
15 or privilege to drive reinstated until the civil penalty has
16 been paid.

17 Sec. 18. NEW SECTION. 321J.18 OTHER EVIDENCE.

18 This chapter does not limit the introduction of any
19 competent evidence bearing on the question of whether a person
20 was under the influence of an alcoholic beverage or a drug,
21 including the results of chemical tests of specimens of blood,
22 breath or urine obtained more than two hours after the person
23 was operating a motor vehicle.

24 Sec. 19. NEW SECTION. 321J.19 INFORMATION RELAYED TO
25 OTHER STATES.

26 When it has been finally determined under this chapter that
27 a nonresident's privilege to operate a motor vehicle in this
28 state has been revoked or denied, the department shall give
29 information in writing of the action taken to the official in
30 charge of traffic control or public safety of the state of the
31 person's residence and of any state in which the person has a
32 license.

33 Sec. 20. NEW SECTION. 321J.20 TEMPORARY RESTRICTED
34 LICENSE.

35 1. The department may, on application, issue a temporary

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

15 a. The person's motor vehicle license is revoked under
16 section 321J.4, subsection 1, 2, 4, or 6.

17 b. The person's motor vehicle license is revoked under
18 section 321J.9 and the person has entered a plea of guilty on
19 a charge of a violation of section 321J.2 which arose from the
20 same set of circumstances which resulted in the person's motor
21 vehicle license revocation under section 321J.9 and the guilty
22 plea is not withdrawn at the time of or after application for
23 the temporary restricted license.

24 c. The person's motor vehicle license is revoked under
25 section 321J.12.

26 However, a temporary restricted license may be issued if
27 the person's motor vehicle license is revoked under section
28 321J.9, and the revocation is a second revocation under this
29 chapter, and the first three hundred and sixty days of the
30 revocation have expired.

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

35 3. A person holding a temporary restricted license issued

1 by the department under this section shall not operate a motor
2 vehicle for pleasure.

3 Sec. 21. NEW SECTION. 321J.21 DRIVING WHILE LICENSE
4 DENIED OR REVOKED.

5 A person whose motor vehicle license or nonresident
6 operating privilege has been denied or revoked as provided in
7 this chapter and who drives a motor vehicle upon the highways
8 of this state while the license or privilege is denied or
9 revoked commits a serious misdemeanor. The department, upon
10 receiving the record of the conviction of a person under this
11 section upon a charge of driving a motor vehicle while the
12 license of the person was revoked or denied, shall extend the
13 period of revocation or denial for an additional like period,
14 and the department shall not issue a new license during the
15 additional period.

16 Sec. 22. NEW SECTION. 321J.22 COURT-ORDERED DRINKING
17 DRIVERS COURSE.

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

20 a. "Course for drinking drivers" means an approved course
21 designed to inform the offender about drinking and driving and
22 encourage the offender to assess the offender's own drinking
23 and driving behavior in order to select practical
24 alternatives.

25 b. "Satisfactory completion of a course" means receiving
26 at the completion of a course a grade from the course
27 instructor of "C" or "2.0," or better.

28 2. After a conviction for, or a plea of guilty of, a
29 violation of section 321J.2, the court in addition to its
30 power to commit the defendant for treatment of alcoholism
31 under section 321J.3, may order the defendant, at the
32 defendant's own expense, to enroll in, attend, and
33 successfully complete a course for drinking drivers. The
34 court may alternatively or additionally require the defendant
35 to seek evaluation, treatment or rehabilitation services under

1 section 125.33 at the defendant's expense and to furnish
2 evidence of successful completion. A copy of the order shall
3 be forwarded to the department.

4 3. The course provided in this section shall be offered on
5 a regular basis at each area school as defined in section
6 280A.2. Enrollment in the courses is not limited to persons
7 ordered to enroll, attend and successfully complete the course
8 under subsection 2, and any person convicted of a violation of
9 section 321J.2 who was not ordered to enroll in a course may
10 enroll in and attend a course for drinking drivers. The
11 course required by this section shall be taught by the area
12 schools under the department of public instruction and
13 approved by the department. The department of public
14 instruction shall establish reasonable fees to defray the
15 expense of obtaining classroom space, instructor salaries, and
16 class materials. A person shall not be denied enrollment in a
17 course by reason of the person's indigency.

18 4. An employer shall not discharge a person from
19 employment solely for the reason of work absence to attend a
20 course required by this section. Any employer who violates
21 this section is liable for damages which include but are not
22 limited to actual damages, court costs, and reasonable
23 attorney fees. The person may also petition the court for
24 imposition of a cease and desist order against the person's
25 employer and for reinstatement to the person's previous
26 position of employment.

27 5. The department of public instruction shall prepare a
28 list of the locations of the courses taught under this
29 section, the dates and times taught, the procedure for
30 enrollment, and the schedule of course fees. The list shall
31 be kept current and a copy of the list shall be sent to each
32 court having jurisdiction over offenses provided in this
33 chapter.

34 6. The department of public instruction shall maintain
35 enrollment, attendance, successful and nonsuccessful

1 completion data on the persons ordered to enroll, attend and
2 successfully complete a course for drinking drivers. This
3 data shall be forwarded to the court.

4 Sec. 23. NEW SECTION. ROADBLOCKS CONDUCTED BY LAW
5 ENFORCEMENT AGENCIES.

6 1. The law enforcement agencies of this state may conduct
7 emergency vehicle roadblocks in response to immediate threats
8 to the health, safety, and welfare of the public; and
9 otherwise may conduct routine vehicle roadblocks only as
10 provided in this section. Routine vehicle roadblocks may be
11 conducted to enforce compliance with the law regarding any of
12 the following:

- 13 a. The licensing of operators of motor vehicles.
- 14 b. The registration of motor vehicles.
- 15 c. The safety equipment required on motor vehicles.
- 16 d. The provisions of chapters 109 and 110.

17 2. Any routine vehicle roadblock conducted under this
18 section shall meet the following requirements:

- 19 a. The location of the roadblock, the time during which
20 the roadblock will be conducted, and the procedure to be used
21 while conducting the roadblock, shall be determined by
22 policymaking administrative officers of the law enforcement
23 agency.
- 24 b. The roadblock location shall be selected for its safety
25 and visibility to oncoming motorists, and adequate advance
26 warning signs, illuminated at night or under conditions of
27 poor visibility, shall be erected to provide timely
28 information to approaching motorists of the roadblock and its
29 nature.
- 30 c. There shall be uniformed officers and marked official
31 vehicles of the law enforcement agency or agencies involved,
32 in sufficient quantity and visibility to demonstrate the
33 official nature of the roadblock.
- 34 d. The selection of motor vehicles to be stopped shall not
35 be arbitrary.

1 e. The roadblock shall be conducted to assure the safety
2 of and to minimize the inconvenience of the motorists
3 involved.

4 Sec. 24. NEW SECTION. 123.151 POSTING NOTICE ON DRUNK
5 DRIVING LAWS REQUIRED.

6 State liquor stores and holders of liquor control licenses,
7 wine permits, or beer permits shall post in a prominent place
8 in the state liquor stores or licensed premises notice
9 explaining the operation of and penalties of the laws which
10 prohibit the operation of a motor vehicle by a person who is
11 intoxicated. The size, print size, location, and content of
12 the notice shall be established by rule of the department.

13 Sec. 25. Section 125.44, unnumbered paragraph 6, Code
14 1985, is amended to read as follows:

15 The department is liable for the cost of care, treatment,
16 and maintenance of a substance abuser admitted to the facility
17 voluntarily or pursuant to section 125.75, 125.81, or 125.91
18 or section ~~321-2817-321-2837~~-~~subsection-37~~ 321J.3 or 204.409,
19 subsection 2 only to those facilities that have a contract
20 with the department under this section, only for the amount
21 computed according to and within the limits of liability
22 prescribed by this section, and only when the substance abuser
23 is unable to pay the costs and there is no other person, firm,
24 corporation or insurance company bound to pay the costs.

25 Sec. 26. NEW SECTION. 217A.30 ASSIGNMENT TO TREATMENT
26 FACILITIES.

27 1. The director of the department of corrections may
28 assign an offender committed to the custody of the director
29 for a felony violation of chapter 321J to a facility which
30 meets all of the following requirements:

31 a. Is a treatment facility meeting the licensure standards
32 of the division of substance abuse of the department of public
33 health.

34 b. Is a facility meeting applicable standards of the
35 American corrections association.

1 c. Is a facility which meets any other rule or requirement
2 adopted by the department pursuant to chapter 17A.

3 2. The assignment of an offender pursuant to subsection 1
4 shall be for purposes of substance abuse treatment and
5 education, and may include work programs for the offender at
6 times when the offender is not in substance abuse treatment or
7 education.

8 3. Offenders assigned to a facility pursuant to this
9 section shall not be included in calculations used to
10 determine the existence of a prison overcrowding state of
11 emergency.

12 4. The director shall prepare proposed administrative
13 rules review committee for the funding of the program by means
14 of self contribution by the offenders, insurance reimbursement
15 on behalf of offenders, or other forms of funding, program
16 structure, criteria for the evaluation of facilities and
17 offenders for participation in the programs, and all other
18 issues the director shall deem appropriate. Proposed rules
19 prepared pursuant to this subsection shall be submitted to the
20 administrative rules review committee on or before September
21 15, 1986.

22 Sec. 27. Section 307.27, subsection 5, Code 1985, is
23 amended to read as follows:

24 5. Administer the provisions of chapters 321A, ~~321B~~, 321E,
25 and 321F, and 321J relating to motor vehicle financial
26 responsibility, the implied consent law, the movement of
27 vehicles of excessive size and weight and the leasing and
28 renting of vehicles.

29 Sec. 28. Section 321.178, subsection 1, unnumbered
30 paragraph 1, Code 1985, is amended to read as follows:

31 An approved driver education course as programmed by the
32 department of public instruction shall consist of at least
33 thirty clock hours of classroom instruction, and six or more
34 clock hours of laboratory instruction of which at least three
35 clock hours shall consist of street or highway driving. An

1 approved course shall include a minimum of two hours of
2 classroom instruction concerning substance abuse as part of
3 its curriculum. After the student has completed three clock
4 hours of street or highway driving and has demonstrated to the
5 instructor an ability to properly operate a motor vehicle and
6 upon written request of a parent or guardian, the instructor
7 may waive the remaining required laboratory instruction.

8 Sec. 29. Section 321.191, unnumbered paragraph 2, Code
9 1985, is amended to read as follows:

10 There shall be a fee of twenty dollars for reinstatement of
11 a chauffeur's license or operator's license which is, after
12 notice and opportunity for hearing, suspended or revoked
13 pursuant to sections 321.193, 321.209 and 321.210, except
14 subsection 4 thereof, 321.513, 321.560, 321A.6, and chapter
15 ~~321B~~ 321J. The twenty-dollar fee shall be collected only if
16 the person whose license was suspended or revoked was served
17 personally with notice. If the person whose license was
18 suspended or revoked was served notice by certified mail, the
19 reinstatement fee shall be ten dollars.

20 Sec. 30. Section 321.196, Code Supplement 1985, is amended
21 by adding the following new unnumbered paragraph:

22 NEW UNNUMBERED PARAGRAPH. Prior to the renewal of a
23 license pursuant to this section, the department shall issue
24 to each applicant information on the law relating to the
25 operation of a motor vehicle while intoxicated and statistical
26 information relating to the number of injuries and fatalities
27 occurring as a result of the operation of motor vehicles while
28 intoxicated.

29 Sec. 31. Section 321.209, subsection 2, Code 1985, is
30 amended by striking the subsection.

31 Sec. 32. Section 321.210, Code 1985, is amended by adding
32 the following new unnumbered paragraph:

33 NEW UNNUMBERED PARAGRAPH. The department shall not
34 consider or assess any points for speeding violations of ten
35 miles per hour or less over the legal speed limit in speed

1 zones that have a legal speed limit greater than thirty-five
2 miles per hour in determining a license suspension under this
3 section.

4 Sec. 33. Section 321.213, Code 1985, is amended to read as
5 follows:

6 321.213 LICENSE SUSPENSIONS OR REVOCATIONS DUE TO
7 VIOLATIONS BY JUVENILE DRIVERS.

8 Upon the entering of an order at the conclusion of an
9 adjudicatory hearing under section 232.47 that the child
10 violated a provision of this chapter or chapter 321A or
11 chapter 321J for which the penalty is greater than a simple
12 misdemeanor, ~~or that the child refused to submit to chemical~~
13 ~~testing under section 321B:4,~~ the clerk of the juvenile court
14 in the adjudicatory hearing shall forward a copy of the
15 adjudication to the department. Notwithstanding section
16 232.55, a final adjudication in a juvenile court that the
17 child violated a provision of this chapter or chapter 321A or
18 chapter 321J constitutes a final conviction of a violation of
19 a provision of this chapter or chapter 321A or chapter 321J
20 for purposes of section 321.189, subsection 2, paragraph "b",
21 and sections 321.193, 321.194, 321.200, 321.209, 321.210,
22 321.215, and 321A.17. ~~Notwithstanding section 232.55, the~~
23 ~~director shall revoke the license or permit of a child under~~
24 ~~section 321B:13 upon receipt of a copy of the final~~
25 ~~adjudication in a juvenile court that the child refused to~~
26 ~~submit to chemical testing under section 321B:4.~~

27 Sec. 34. Section 321.218, unnumbered paragraph 1, Code
28 Supplement 1985, is amended to read as follows:

29 A person whose operator's or chauffeur's license or driving
30 privilege has been denied, canceled, suspended or revoked as
31 provided in this chapter, and who drives a motor vehicle upon
32 the highways of this state while the license or privilege is
33 denied, canceled, suspended, or revoked commits a simple
34 misdemeanor. However, a person whose license or driving
35 privilege has been revoked under section 321.209 ~~or chapter~~

1 ~~321B-and~~ who drives a motor vehicle upon the highways of this
2 state while the license or privilege is revoked commits a
3 serious misdemeanor. The sentence imposed under this section
4 shall not be suspended by the court, notwithstanding section
5 907.3 or any other statute. The department, upon receiving
6 the record of the conviction of a person under this section
7 upon a charge of driving a motor vehicle while the license of
8 the person was suspended or revoked, shall, except for
9 licenses suspended under section 321.513, extend the period of
10 suspension or revocation for an additional like period, and
11 the department shall not issue a new license during the
12 additional period.

13 Sec. 35. Section 321.228, subsection 2, Code 1985, is
14 amended to read as follows:

15 2. The provisions of sections 321.261 to 321.274~~7-section~~
16 and sections 321.277 and ~~sections~~ 321.280 ~~to-321-282~~ shall
17 apply upon highways and elsewhere throughout the state.

18 Sec. 36. Section 321.233, unnumbered paragraph 1, Code
19 Supplement 1985, is amended to read as follows:

20 This chapter, except ~~section~~ sections 321.277 and ~~sections~~
21 321.280 ~~to-321-282~~ does not apply to persons and motor
22 vehicles and other equipment while actually engaged in work
23 upon the surface of a highway officially closed to traffic but
24 does apply to such persons and vehicles when traveling to or
25 from such work. The minimum speed restriction of section
26 321.285, subsection 8, and the provisions of sections 321.297
27 and 321.298 do not apply to road workers operating maintenance
28 equipment owned by or under lease to any state or local
29 authority while engaged in road maintenance, road blading,
30 snow and ice control and removal, and granular resurfacing
31 work on a highway, whether or not the highway is closed to
32 traffic.

33 Sec. 37. Section 321.555, subsection 1, paragraph b, Code
34 1985, is amended to read as follows:

35 b. Operating a motor vehicle in violation of section

1 ~~321-281~~ 321J.2.

2 Sec. 38. Section 321A.17, subsection 1, Code 1985, is
3 amended to read as follows:

4 1. Whenever the director, under any law of this state,
5 suspends or revokes the license of any person upon receiving
6 record of a conviction or a forfeiture of bail or revokes the
7 license of any person pursuant to chapter ~~321B~~ 321J, the
8 director shall also suspend the registration for all motor
9 vehicles registered in the name of the person, except that the
10 director shall not suspend the registration, unless otherwise
11 required by law, if the person has previously given or
12 immediately gives and thereafter maintains proof of financial
13 responsibility with respect to all motor vehicles registered
14 by the person.

15 Sec. 39. Section 331.653, subsection 33, Code Supplement
16 1985, is amended to read as follows:

17 33. Carry out duties relating to the enforcement of laws
18 prohibiting the operation of a motor vehicle while under the
19 influence of an alcoholic beverage as provided in chapter ~~321B~~
20 321J.

21 Sec. 40. Section 602.8102, subsection 51, Code Supplement
22 1985, is amended to read as follows:

23 51. Forward to the department of transportation a copy of
24 the record of each conviction or forfeiture of bail of a
25 person charged with the violation of the laws regulating the
26 operation of vehicles on public roads as provided in sections
27 ~~321-281~~ 321J.2 and 321.491.

28 Sec. 41. NEW SECTION. 707.6A HOMICIDE BY VEHICLE.

29 1. A person commits a class "D" felony when the person
30 unintentionally causes the death of another by either of the
31 following means:

32 a. Operating a motor vehicle while under the influence of
33 alcohol or a drug or a combination of such substances or while
34 having an alcohol concentration of .10 or more, in violation
35 of section 321J.2.

1 b. Driving a motor vehicle in a reckless manner with
2 willful or wanton disregard for the safety of persons or
3 property, in violation of section 321.277.

4 2. A person commits an aggravated misdemeanor when the
5 person unintentionally causes the death of another by
6 operating a motor vehicle in any of the following manners:

7 a. Drag racing, in violation of section 321.278.

8 b. Eluding or attempting to elude a pursuing law
9 enforcement vehicle, in violation of section 321.279.

10 3. As used in this section, "motor vehicle" includes any
11 vehicle defined as a motor vehicle in section 321.1.

12 Sec. 42. Section 804.31, unnumbered paragraph 2, Code
13 Supplement 1985, is amended to read as follows:

14 This section does not prohibit the request for and
15 administration of a preliminary breath screening test or the
16 request for and administration of a chemical test of a body
17 substance or substances under chapter ~~321B~~ 321J prior to the
18 arrival of a qualified interpreter for a hearing impaired
19 person who is believed to have committed a violation of
20 section ~~321.281~~ 321J.2. However, upon the arrival of the
21 interpreter the officer who requested the chemical test shall
22 explain through the interpreter the reason for the testing,
23 the consequences of the person's consent or refusal, and the
24 ramifications of the results of the test, if one was
25 administered.

26 Sec. 43. Section 902.3, Code 1985, is amended to read as
27 follows:

28 902.3 INDETERMINATE SENTENCE.

29 When a judgment of conviction of a felony, other than a
30 class "A" felony is entered against a person, the court, in
31 imposing a sentence of confinement, shall commit the person
32 into the custody of the director of the Iowa department of
33 corrections for an indeterminate term, the maximum length of
34 which shall not exceed the limits as fixed by section 707.3 or
35 section 902.9 nor shall the term be less than the minimum term

1 imposed by law, if a minimum sentence is provided. However,
2 the court may sentence a person convicted of a class "D"
3 felony for a violation of section 321J.2 to imprisonment for
4 up to one year in a county jail under section 902.9,
5 subsection 4, and the person shall not be under the custody of
6 the director of the Iowa department of corrections.

7 Sec. 44. Section 902.9, subsection 4, Code 1985, is
8 amended to read as follows:

9 4. A class "D" felon, not an habitual offender, may be
10 sentenced to imprisonment for up to one year in the county
11 jail or shall be confined for no more than five years, and in
12 addition may be sentenced to a fine of not more than seven
13 thousand five hundred dollars."

14 Sec. 45. Section 907.3, subsection 1, paragraph g, Code
15 1985, is amended to read as follows:

16 g. The offense is a violation of section ~~321-281~~ 321J.2
17 and, within the previous six years, the person has been
18 convicted of a violation of that section or the person's
19 driver's license has been revoked pursuant to ~~that section or~~
20 ~~chapter-321B~~ section 321J.4, 321J.9, or 321J.12.

21 Sec. 46. Section 912.1, subsection 4, Code 1985, is
22 amended to read as follows:

23 4. "Crime" means conduct that occurs or is attempted in
24 this state, poses a substantial threat of personal injury or
25 death, and is punishable as a felony, an aggravated
26 misdemeanor, or a serious misdemeanor, or would be so
27 punishable but for the fact that the person engaging in the
28 conduct lacked the capacity to commit the crime under the laws
29 of this state. "Crime" does not include conduct arising out
30 of the ownership, maintenance, or use of a motor vehicle,
31 motorcycle, motorized bicycle, train, boat, or aircraft except
32 for violations of section ~~321-281~~ 321J.2 or when the intention
33 is to cause personal injury or death. A plea or verdict of
34 guilty of a charge under section ~~321-281~~ 321J.2 or a license
35 revocation under section ~~321B-13~~ 321J.9 or ~~321B-16~~ 321J.12

1 shall be considered by the department as evidence of a
2 violation of section ~~321.281~~ 321J.2 for the purposes of this
3 chapter.

4 Sec. 47. Section 321.281, Code Supplement 1985, is
5 repealed.

6 Sec. 48. Section 321.282, Code 1985, is repealed.

7 Sec. 49. Section 321.283, Code Supplement 1985, is
8 repealed.

9 Sec. 50. Chapter 321B, Code 1985 and Code Supplement 1985,
10 is repealed.

11 Sec. 51. References in chapter 321J to actions which
12 occurred previously under "this chapter" or "this section"
13 include the preceding Code chapter or section which covers the
14 same or substantially similar actions.

15 Sec. 52. This Act applies to any judicial or
16 administrative action which arises due to violation of a
17 section of this Act or an implementing rule, and which occurs
18 after the effective date of this Act. This Act also applies
19 to any judicial or administrative action which arose prior to
20 the effective date of this Act due to a violation of a
21 preceding Code section or implementing rule which was the same
22 or substantially similar to a section in this Act, or an
23 implementing rule if the defendant or defendant's counsel
24 requests that the action proceed under this Act.

25 EXPLANATION

26 This bill, as it relates to the offense of operating a
27 motor vehicle while under the influence of alcohol or a drug,
28 consolidates into a single chapter the provisions in the Code
29 dealing with the offense of operating a motor vehicle under
30 the influence of alcohol or a drug, lowers the per se level of
31 alcohol concentration to .10, provides a presumption that a
32 chemical test performed within two hours of an arrest
33 indicates the alcohol concentration at the time of arrest,
34 provides that the period of revocation of a person's privilege
35 to drive upon conviction for the offense of operating a motor

1 vehicle while under the influence of alcohol or a drug
2 conforms to the period of revocation which would have occurred
3 under the administrative process for a test result or implied
4 consent revocation, provides a six-year limitation on counting
5 previous offenses to determine the degree of the offense under
6 the administrative revocation process, unifies the provisions
7 of the Code dealing with the issuance of a temporary
8 restricted license, and provides new criteria for the issuance
9 of a temporary restricted license.

10 The bill also provides for the offense of vehicular
11 homicide, modifies the penalties for exceeding posted speed
12 limits by less than ten miles per hour, creates a new section
13 relating to the use of roadblocks in certain law enforcement
14 functions, authorizes the determinate sentencing of felony
15 offenders of chapter 321J, allows the director of the
16 department of corrections to assign felony violators of
17 chapter 321J to treatment facilities, and makes other
18 modifications to the law relating to the operation of motor
19 vehicles.

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HOUSE FILE 2493

H-6129

1 Amend House File 2493 as follows:

2 1. By striking page 27, line 31, through page 28,
3 line 3.

4 2. By renumbering as necessary.

BY MCKEAN of Jones

OSTERBERG of Linn

MULLINS of Kossuth

LLOYD-JONES of Johnson

SHONING of Woodbury

HALVORSON of Clayton

MILLER of Cherokee

CARTER of Henry

H-6129 FILED MAY 2, 1986

ADOPTED (p. 2038)

HOUSE FILE 2493

H-6130

1 Amend House File 2493 as follows:

2 1. By striking page 31, line 26 through page 32,
3 line 13.

H-6130 FILED MAY 2, 1986

BY SHERZAN of Polk

ADOPTED (p. 2054)

HOUSE FILE 2493

H-6132

1 Amend House File 2493 as follows:

2 1. Page 31, by inserting after line 25 the
3 following:

4 "Sec. ____ . Section 805.8, subsection 2, paragraph
5 "g", unnumbered paragraph 3, Code Supplement 1985, is
6 amended to read as follows:

7 For excessive speed violations when in excess of
8 the limit under those sections by five or less miles
9 per hour the fine is ten dollars, by more than five
10 and not more than ten miles per hour the fine is
11 twenty dollars, by more than ten and not more than
12 fifteen miles per hour the fine is thirty dollars, by
13 more than fifteen and not more than twenty miles per
14 hour the fine is forty dollars, and by more than
15 twenty miles per hour the fine is one hundred forty
16 dollars plus two dollars for each mile per hour of
17 excessive speed over twenty miles per hour over the
18 limit."

19 2. By numbering and renumbering as necessary.

BY BENNETT of Ida

H-6132 FILED MAY 2, 1986

CARPENTER of Polk

LOST (p. 2039)

HOUSE FILE 2493

H-6126

1 Amend House File 2493 as follows:

2 1. Page 4, line 35, by striking the figure
3 "321J.23" and inserting the following: "321J.22".

4 2. Page 6, line 28, by inserting before the word
5 "license" the words "motor vehicle".

6 3. Page 7, line 3, by striking the word "drive".

7 4. Page 18, line 31, by striking the word and
8 figure "321J.14. If" and inserting the following:

9 "321J.14 if".

10 5. Page 19, line 3, by inserting before the word
11 "director's" the word "the".

12 6. Page 20, line 14, by striking the words
13 "license or permit" and inserting the following:
14 "motor vehicle license".

15 7. Page 20, line 15, by striking the words
16 "privilege to drive" and inserting the words
17 "nonresident operating privilege".

18 8. Page 21, line 10, by striking the word
19 "certificate" and inserting the word "certification".

20 9. Page 21, line 11, by inserting before the word
21 "treatment" the words "substance abuse".

22 10. Page 26, line 12, by inserting after the word
23 "administrative" the words "rules for the
24 consideration of the administrative".

25 11. Page 28, line 3, by inserting after the word
26 "section." the following: "This paragraph shall apply
27 to only the first two such violations which occur
28 within any twelve month period."

29 12. Page 32, by striking lines 9 through 13, and
30 inserting the following:

31 "4. A class "D" felon, not an habitual offender,
32 shall be confined for no more than five years, and in
33 addition may be sentenced to a fine of not more than
34 seven thousand five hundred dollars. A class "D"
35 felon, such felony being for a violation of section
36 321J.2, may be sentenced to imprisonment for up to one
37 year in the county jail."

38 13. Title page, line 2, by striking the word "a".

H-6126 FILED MAY 2, 1986 BY JAY of Appanoose
ADOPTED, THEN LINES 25-37 PLACED OUT OF ORDER (p. 20.28)
(p. 20.27)

In Judiciary 5/2 Amend (5969) & Do Pass 5/2 (p. 1589)

HOUSE FILE 2493
BY NORLAND and STROMER

(As Amended and Passed by the House May 2, 1986)

Be Passed House, Date 5-2-86 (p. 2178) Passed Senate, Date 5-2-86 (p. 1572)
Vote: Ayes 59 Nays 29 Vote: Ayes 33 Nays 12
Approved May 27, 1986

A BILL FOR

1 An Act relating to criminal penalties arising from the operation
*2 of motor vehicles.

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

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House Amendments _____

Deleted Language *

- 1 Section 1. NEW SECTION. 321J.1 DEFINITIONS.
2 As used in this chapter unless the context otherwise
3 requires:
- 4 1. "Alcohol concentration" means the number of grams of
5 alcohol per any of the following:
 - 6 a. One hundred milliliters of blood.
 - 7 b. Two hundred ten liters of breath.
 - 8 c. Sixty-seven milliliters of urine.
 - 9 2. "Alcoholic beverage" includes alcohol, wine, spirits,
10 beer, or any other beverage which contains ethyl alcohol and
11 is fit for human consumption.
 - 12 3. "Arrest" includes but is not limited to taking into
13 custody pursuant to section 232.19.
 - 14 4. "Department" means the state department of
15 transportation.
 - 16 5. "Director" means the director of transportation or the
17 director's designee.
 - 18 6. "Motor vehicle license" means any license or permit
19 issued to a person to operate a motor vehicle in this state,
20 including but not limited to an operator, chauffeur, or
21 motorized bicycle license and an instruction or temporary
22 permit.
 - 23 7. "Peace officer" means:
 - 24 a. A member of the highway patrol.
 - 25 b. A police officer under civil service as provided in
26 chapter 400.
 - 27 c. A sheriff.
 - 28 d. A regular deputy sheriff who has had formal police
29 training.
 - 30 e. Any other law enforcement officer who has
31 satisfactorily completed an approved course relating to motor
32 vehicle operators under the influence of alcoholic beverages
33 at the Iowa law enforcement academy or a law enforcement
34 training program approved by the department of public safety.
 - 35 8. "Serious injury" means a bodily injury which creates a

1 substantial risk of death, or which causes serious permanent
2 disfigurement, or which causes protracted loss or impairment
3 of the function of any bodily organ or major bodily member, or
4 which causes the loss of any bodily member.

5 Sec. 2. NEW SECTION. 321J.2 OPERATING WHILE UNDER THE
6 INFLUENCE OF ALCOHOL OR A DRUG OR WHILE HAVING AN ALCOHOL
7 CONCENTRATION OF .10 OR MORE. (OWI)

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

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

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

15 2. A person who violates this section commits:

16 a. A serious misdemeanor for the first offense and shall
17 be imprisoned in the county jail for not less than forty-eight
18 hours to be served as ordered by the court, less credit for
19 any time the person was confined in a jail or detention
20 facility following arrest, and assessed a fine of not less
21 than five hundred dollars nor more than one thousand dollars.
22 As an alternative to a portion or all of the fine, the court
23 may order the person to perform not more than two hundred
24 hours of unpaid community service. The court may accommodate
25 the sentence to the work schedule of the defendant.

26 b. An aggravated misdemeanor for a second offense and
27 shall be imprisoned in the county jail or community-based
28 correctional facility not less than seven days, which minimum
29 term cannot be suspended notwithstanding section 901.5,
30 subsection 3 and section 907.3, subsection 2, and assessed a
31 fine of not less than seven hundred fifty dollars.

32 c. A class "D" felony for a third offense and each
33 subsequent offense and shall be imprisoned in the county jail
34 or community-based correctional facility for not less than
35 thirty days, which minimum term cannot be suspended

1 notwithstanding section 901.5, subsection 3, and section
2 907.3, subsection 2, and assessed a fine of not less than
3 seven hundred fifty dollars.

4 3. No conviction for, deferred judgment for, or plea of
5 guilty to, a violation of this section which occurred more
6 than six years prior to the date of the violation charged
7 shall be considered in determining that the violation charged
8 is a second, third, or subsequent offense. For the purpose of
9 determining if a violation charged is a second, third, or
10 subsequent offense, deferred judgments pursuant to section
11 907.3 for violations of this section and convictions or the
12 equivalent of deferred judgments for violations in any other
13 states under statutes substantially corresponding to this
14 section shall be counted as previous offenses. The courts
15 shall judicially notice the statutes of other states which
16 define offenses substantially equivalent to the one defined in
17 this section and can therefore be considered corresponding
18 statutes. Each previous violation shall be considered a
19 separate previous offense without regard to whether each was
20 complete as to commission and conviction or deferral of
21 judgment following or prior to any other previous violation.

22 4. A person shall not be convicted and sentenced for more
23 than one violation of this section if the violation is shown
24 to have been committed by either or both of the means
25 described in subsection 1 in the same occurrence.

26 5. The clerk of court shall immediately certify to the
27 department a true copy of each order entered with respect to
28 deferral of judgment, deferral of sentence or pronouncement of
29 judgment and sentence for a defendant under this section.

30 6. This section does not apply to a person operating a
31 motor vehicle while under the influence of a drug if the
32 substance was prescribed for the person and was taken under
33 the prescription and in accordance with the directions of a
34 medical practitioner as defined in section 155.3, subsection
35 11, if there is no evidence of the consumption of alcohol and

1 the medical practitioner had not directed the person to
2 refrain from operating a motor vehicle.

3 7. In any prosecution under this section, evidence of the
4 results of analysis of a specimen of the defendant's blood,
5 breath, or urine is admissible upon proof of a proper
6 foundation. The alcohol concentration established by the
7 results of an analysis of a specimen of the defendant's blood,
8 breath, or urine withdrawn within two hours after the
9 defendant was driving or in physical control of a motor
10 vehicle is presumed to be the alcohol concentration at the
11 time of driving or being in physical control of the motor
12 vehicle.

13 8. The court shall order a defendant convicted of or
14 receiving a deferred judgment for a violation of this section
15 to make restitution, in an amount not to exceed two thousand
16 dollars, for damages resulting directly from the violation.
17 An amount paid pursuant to this restitution order shall be
18 credited toward any adverse judgment in a subsequent civil
19 proceeding arising from the same occurrence. However, other
20 than establishing a credit, a restitution proceeding pursuant
21 to this section shall not be given evidentiary or preclusive
22 effect in a subsequent civil proceeding arising from the same
23 occurrence.

24 9. In any prosecution under this section, the results of a
25 chemical test may not be used to prove a violation of
26 paragraph "b" of subsection 1 if the alcohol concentration
27 indicated by the chemical test minus the established margin of
28 error inherent in the device or method used to conduct the
29 chemical test does not equal an alcohol concentration of .10
30 or more.

31 Sec. 3. NEW SECTION. 321J.3 COURT ORDERED SUBSTANCE
32 ABUSE EVALUATION OR TREATMENT.

33 1. On a conviction for a violation of section 321J.2, the
34 court may order the defendant to attend a course for drinking
35 drivers under section 321J.22. If the defendant submitted to

1 a chemical test on arrest for the violation of section 321J.2
2 and the test indicated an alcohol concentration of .20 or
3 higher, the court shall order the defendant, on conviction, to
4 undergo a substance abuse evaluation and the court may order
5 the defendant to follow the recommendations proposed in the
6 substance abuse evaluation for appropriate substance abuse
7 treatment for the defendant. Court ordered substance abuse
8 treatment is subject to the periodic reporting requirements of
9 section 125.86. If a defendant is committed by the court to a
10 substance abuse treatment facility, the administrator of the
11 facility shall report to the court when it is determined that
12 the defendant has received the maximum benefit of treatment at
13 the facility and the defendant shall be released from the
14 facility. The time for which the defendant is committed for
15 treatment shall be credited against the defendant's sentence.
16 The court may prescribe the length of time for the evaluation
17 and treatment or it may request that the area school
18 conducting the course for drinking drivers which the person is
19 ordered to attend or the treatment program to which the person
20 is committed immediately report to the court when the person
21 has received maximum benefit from the course for drinking
22 drivers or treatment program or has recovered from the
23 person's addiction, dependency, or tendency to chronically
24 abuse alcohol or drugs. A person committed under this section
25 who does not possess sufficient income or estate to make
26 payment of the costs of the treatment in whole or in part
27 shall be considered a state patient and the costs of treatment
28 shall be paid as provided in section 125.44. A defendant who
29 fails to carry out the order of the court or who fails to
30 successfully complete or attend a course for drinking drivers
31 or an ordered substance abuse treatment program shall be
32 confined in the county jail for twenty days in addition to any
33 other imprisonment ordered by the court or may be ordered to
34 perform unpaid community service work, and shall be placed on
35 probation for one year with a violation of this probation

1 punishable as contempt of court.

2 2. As a condition of a suspended sentence or portion of
3 sentence for a second, third, or subsequent offense in
4 violation of section 321J.2, the court upon hearing may commit
5 the defendant for inpatient treatment of alcoholism or drug
6 addiction or dependency to any hospital, institution, or
7 community correctional facility in Iowa providing such
8 treatment. The time for which the defendant is committed for
9 treatment shall be credited against the defendant's sentence.
10 The court may prescribe the length of time for the evaluation
11 and treatment or it may request that the hospital to which the
12 person is committed immediately report to the court when the
13 person has received maximum benefit from the program of the
14 hospital or institution or has recovered from the person's
15 addiction, dependency, or tendency to chronically abuse
16 alcohol or drugs. A person committed under this section who
17 does not possess sufficient income or estate to make payment
18 of the costs of the treatment in whole or in part shall be
19 considered a state patient and the costs of treatment shall be
20 paid as provided in section 125.44.

21 Sec. 4. NEW SECTION. 321J.4 REVOCATION OF MOTOR VEHICLE
22 LICENSE ON CONVICTION OR COURT ORDER.

23 1. If a defendant is convicted of a violation of section
24 321J.2 and the defendant's motor vehicle license or
25 nonresident operating privilege has not been revoked under
26 section 321J.9 or 321J.12 for the occurrence from which the
27 arrest arose, the department shall revoke the defendant's
28 motor vehicle license or nonresident operating privilege for
29 one hundred eighty days if the defendant has had no previous
30 conviction under section 321J.2 or revocation under section
31 321J.9 or 321J.12 within the previous six years and for one
32 year if the defendant has had one or more previous convictions
33 or revocations under those sections within the previous six
34 years.

35 2. If the court defers judgment pursuant to section 907.3

1 for a violation of section 321J.2, the court shall order the
2 department to revoke the defendant's motor vehicle license or
3 nonresident operating privilege for a period of not less than
4 thirty days nor more than ninety days if the defendant's motor
5 vehicle license or nonresident operating privilege has not
6 been revoked under section 321J.9 or 321J.12 for the
7 occurrence from which the arrest arose. The court shall
8 immediately require the defendant to surrender to it all Iowa
9 licenses or permits held by the defendant, which the court
10 shall forward to the department with a copy of the order
11 deferring judgment.

12 3. a. Upon a plea or verdict of guilty of a third or
13 subsequent violation of section 321J.2, the court shall order
14 the department to revoke the defendant's motor vehicle license
15 or nonresident operating privilege for a period of six years.
16 The court shall require the defendant to surrender to it all
17 Iowa licenses or permits held by the defendant, which the
18 court shall forward to the department with a copy of the order
19 for revocation.

20 b. After two years from the date of the order for
21 revocation, the defendant may apply to the court for
22 restoration of the defendant's eligibility for a motor vehicle
23 license. The application may be granted only if all of the
24 following are shown by the defendant by a preponderance of the
25 evidence:

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

31 (2) The defendant has not been convicted, since the date
32 of the revocation order, of any subsequent violations of
33 section 321J.2 or 123.46, or any comparable city or county
34 ordinance, and the defendant has not, since the date of the
35 revocation order, submitted to a chemical test under this

1 chapter that indicated an alcohol concentration as defined in
2 section 321J.1 of .10 or more, or refused to submit to
3 chemical testing under this chapter.

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

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

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

13 4. Upon a plea or verdict of guilty of a violation of
14 section 321J.2 which involved a personal injury, the court
15 shall determine in open court, from consideration of the
16 information in the file and any other evidence the parties may
17 submit, whether a serious injury was sustained by any person
18 other than the defendant and, if so, whether the defendant's
19 conduct in violation of section 321J.2 caused the serious
20 injury. If the court so determines, the court shall order the
21 department to revoke the defendant's motor vehicle license or
22 nonresident operating privilege for a period of one year in
23 addition to any other period of suspension or revocation. The
24 defendant shall surrender to the court any Iowa license or
25 permit and the court shall forward it to the department with a
26 copy of the order for revocation.

27 5. Upon a plea or verdict of guilty of a violation of
28 section 321J.2 which involved a death, the court shall
29 determine in open court, from consideration of the information
30 in the file and any other evidence the parties may submit,
31 whether a death occurred and, if so, whether the defendant's
32 conduct in violation of section 321J.2 caused the death. If
33 the court so determines, the court shall order the department
34 to revoke the defendant's motor vehicle license or nonresident
35 operating privilege for a period of six years. The defendant

1 shall surrender to the court any Iowa license or permit and
2 the court shall forward it to the department with a copy of
3 the order for revocation.

4 6. If a license or permit to operate a motor vehicle is
5 revoked or denied under this section or section 321J.9 or
6 321J.12, the period of revocation or denial shall be the
7 period provided for such a revocation or until the defendant
8 reaches the age of eighteen whichever period is longer.

9 Sec. 5. NEW SECTION. 321J.5 PRELIMINARY SCREENING TEST.

10 When a peace officer has reasonable grounds to believe that
11 a motor vehicle operator may be violating or has violated
12 section 321J.2, or the operator has been involved in a motor
13 vehicle collision resulting in injury or death, the peace
14 officer may request the operator to provide a sample of the
15 operator's breath for a preliminary screening test using a
16 device approved by the commissioner of public safety for that
17 purpose. The results of this preliminary screening test may
18 be used for the purpose of deciding whether an arrest should
19 be made and whether to request a chemical test authorized in
20 this chapter, but shall not be used in any court action except
21 to prove that a chemical test was properly requested of a
22 person pursuant to this chapter.

23 Sec. 6. NEW SECTION. 321J.6 IMPLIED CONSENT TO TEST.

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

1 conditions exist:

2 a. A peace officer has lawfully placed the person under
3 arrest for violation of section 321J.2.

4 b. The person has been involved in a motor vehicle
5 accident or collision resulting in personal injury or death.

6 c. The person has refused to take a preliminary breath
7 screening test provided by this chapter.

8 d. The preliminary breath screening test was administered
9 and it indicated an alcohol concentration as defined in
10 section 321J.1 of .10 or more.

11 e. The preliminary breath screening test was administered
12 and it indicated an alcohol concentration of less than .10 and
13 the peace officer has reasonable grounds to believe that the
14 person was under the influence of a drug other than alcohol or
15 a combination of alcohol and another drug.

16 2. The peace officer shall determine which of the three
17 substances, breath, blood, or urine, shall be tested. Refusal
18 to submit to a chemical test of urine or breath is deemed a
19 refusal to submit, and section 321J.9 applies. A refusal to
20 submit to a chemical test of blood is not deemed a refusal to
21 submit, but in that case, the peace officer shall then
22 determine which one of the other two substances shall be
23 tested and shall offer the test. If the peace officer fails
24 to offer a test within two hours after the preliminary
25 screening test is administered or refused or the arrest is
26 made, whichever occurs first, a test is not required, and
27 there shall be no revocation under section 321J.9.

28 3. Notwithstanding subsection 2, if the peace officer has
29 reasonable grounds to believe that the person was under the
30 influence of a drug other than alcohol or a combination of
31 alcohol and another drug, a urine test may be required even
32 after a blood or breath test has been administered. Section
33 321J.9 applies to a refusal to submit to a chemical test of
34 urine requested under this subsection.

35 Sec. 7. NEW SECTION. 321J.7 DEAD OR UNCONSCIOUS PERSONS.

1 A person who is dead, unconscious, or otherwise in a
2 condition rendering the person incapable of consent or refusal
3 is deemed not to have withdrawn the consent provided by
4 section 321J.6, and the test may be given if a licensed
5 physician certifies in advance of the test that the person is
6 dead, unconscious, or otherwise in a condition rendering that
7 person incapable of consent or refusal.

8 Sec. 8. NEW SECTION. 321J.8 STATEMENT OF OFFICER.

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

11 1. If the person refuses to submit to the test, the
12 person's license or operating privilege will be revoked by the
13 department for the applicable period under section 321J.9.

14 2. If the person submits to the test and the results
15 indicate an alcohol concentration as defined in section 321J.1
16 of .10 or more, the person's license or operating privilege
17 will be revoked by the department for the applicable period
18 under section 321J.12.

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

21 Sec. 9. NEW SECTION. 321J.9 REFUSAL TO SUBMIT --
22 REVOCATION.

23 If a person refuses to submit to the chemical testing, a
24 test shall not be given, but the department, upon the receipt
25 of the peace officer's certification, subject to penalty for
26 perjury, that the officer had reasonable grounds to believe
27 the person to have been operating a motor vehicle in violation
28 of section 321J.2, that specified conditions existed for
29 chemical testing pursuant to section 321J.6, and that the
30 person refused to submit to the chemical testing, shall revoke
31 the person's motor vehicle license and any nonresident
32 operating privilege for a period of two hundred forty days if
33 the person has no previous revocation within the previous six
34 years under this chapter; and five hundred forty days if the
35 person has one or more previous revocations within the

1 previous six years under this chapter; or if the person is a
2 resident without a license or permit to operate a motor
3 vehicle in this state, the department shall deny to the person
4 the issuance of a license or permit for the same period a
5 license or permit would be revoked, subject to review as
6 provided in this chapter. The effective date of revocation
7 shall be twenty days after the department has mailed notice of
8 revocation to the person by certified mail or, on behalf of
9 the department, a peace officer offering or directing the
10 administration of a chemical test may serve immediate notice
11 of intention to revoke and of revocation on a person who
12 refuses to permit chemical testing. If the peace officer
13 serves that immediate notice, the peace officer shall take the
14 Iowa license or permit of the driver, if any, and issue a
15 temporary license effective for only twenty days. The peace
16 officer shall immediately send the person's license to the
17 department along with the officer's certificate indicating the
18 person's refusal to submit to chemical testing.

19 Sec. 10. NEW SECTION. 321J.10 TESTS PURSUANT TO
20 WARRANTS.

21 1. Refusal to consent to a test under section 321J.6 does
22 not prohibit the withdrawal of a specimen for chemical testing
23 pursuant to a search warrant issued in the investigation of a
24 suspected violation of section 707.5 if all of the following
25 grounds exist:

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

28 b. There are reasonable grounds to believe that one or
29 more of the persons whose driving may have been the proximate
30 cause of the accident was violating section 321J.2 at the time
31 of the accident.

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

35 3. Notwithstanding section 808.3, the issuance of a search

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

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

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

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

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

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

1 when the issuance was ordered.

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

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

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

15 4. Search warrants issued under this section shall
16 authorize and direct peace officers to secure the withdrawal
17 of blood specimens by medical personnel under section 321J.11.
18 Reasonable care shall be exercised to ensure the health and
19 safety of the persons from whom specimens are withdrawn in
20 execution of the warrants. If a person from whom a specimen
21 is to be withdrawn objects to the withdrawal of blood, and the
22 person is capable of giving a specimen of breath, and a direct
23 breath testing instrument is readily available, the warrant
24 may be executed by the withdrawal of a specimen of breath for
25 chemical testing.

26 5. The act of any person knowingly resisting or
27 obstructing the withdrawal of a specimen pursuant to a search
28 warrant issued under this section constitutes a contempt
29 punishable by a fine not exceeding one thousand dollars or
30 imprisonment in a county jail not exceeding one year or by
31 both such fine and imprisonment. Also, if the withdrawal of a
32 specimen is so resisted or obstructed, sections 321J.9 and
33 321J.16 apply.

34 6. Nonsubstantive variances between the contents of the
35 original and duplicate warrants shall not cause a warrant

1 issued under subsection 3 of this section to be considered
2 invalid.

3 7. Specimens obtained pursuant to warrants issued under
4 this section are not subject to disposition under section
5 808.9 or chapter 809.

6 8. Subsections 1 to 7 of this section do not apply where a
7 test may be administered under section 321J.7.

8 9. Medical personnel who use reasonable care and accepted
9 medical practices in withdrawing blood specimens are immune
10 from liability for their actions in complying with requests
11 made of them pursuant to search warrants or pursuant to
12 section 321J.11.

13 Sec. 11. NEW SECTION. 321J.11 TAKING SAMPLE FOR TEST.

14 Only a licensed physician, physician's assistant as defined
15 in section 148C.1, subsection 6, medical technologist, or
16 registered nurse, acting at the request of a peace officer,
17 may withdraw a specimen of blood for the purpose of
18 determining the alcohol concentration or the presence of
19 drugs. However, any peace officer, using devices and methods
20 approved by the commissioner of public safety, may take a
21 specimen of a person's breath or urine for the purpose of
22 determining the alcohol concentration or the presence of
23 drugs. Only new equipment kept under strictly sanitary and
24 sterile conditions shall be used for drawing blood.

25 The person may have an independent chemical test or tests
26 administered at the person's own expense in addition to any
27 administered at the direction of a peace officer. The failure
28 or inability of the person to obtain an independent chemical
29 test or tests does not preclude the admission of evidence of
30 the results of the test or tests administered at the direction
31 of the peace officer. Upon the request of the person who is
32 tested, the results of the test or tests administered at the
33 direction of the peace officer shall be made available to the
34 person.

35 Sec. 12. NEW SECTION. 321J.12 TEST RESULT REVOCATION.

1 Upon certification, subject to penalty for perjury, by the
2 peace officer that there existed reasonable grounds to believe
3 that the person had been operating a motor vehicle in
4 violation of section 321J.2, that there existed one or more of
5 the necessary conditions for chemical testing described in
6 section 321J.6, subsection 1, and that the person submitted to
7 chemical testing and the test results indicated an alcohol
8 concentration as defined in section 321J.1 of .10 or more, the
9 department shall revoke the person's motor vehicle license or
10 nonresident operating privilege for a period of one hundred
11 eighty days if the person has had no revocation within the
12 previous six years under this chapter, and one year if the
13 person has had one or more previous revocations within the
14 previous six years under this chapter.

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

22 If the peace officer serves that immediate notice, the
23 peace officer shall take the person's Iowa license or permit,
24 if any, and issue a temporary license valid only for twenty
25 days. The peace officer shall immediately send the person's
26 driver's license to the department along with the officer's
27 certificate indicating that the test results indicated an
28 alcohol concentration of .10 or more.

29 The results of a chemical test may not be used as the basis
30 for a revocation of a person's motor vehicle license or
31 nonresident operating privilege if the alcohol concentration
32 indicated by the chemical test minus the established margin of
33 error inherent in the device or method used to conduct the
34 chemical test does not equal an alcohol concentration of .10
35 or more.

1 Sec. 13. NEW SECTION. 321J.13 HEARING ON REVOCATION --
2 APPEAL.

3 1. Notice of revocation of a person's motor vehicle
4 license or operating privilege served pursuant to section
5 321J.9 or 321J.12 shall include a form accompanied by a
6 preaddressed envelope on which the person served may indicate
7 by a checkmark if the person wishes to request a temporary
8 restricted license only or if the person wishes a hearing to
9 contest the revocation. The form shall clearly state on its
10 face that the form must be completed and returned within
11 twenty days of receipt or the person's right to a hearing to
12 contest the revocation is foreclosed. The form shall also be
13 accompanied by a statement of the operation of and the
14 person's rights under this chapter.

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

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

31 b. Whether a test was administered and the test results
32 indicated an alcohol concentration as defined in section
33 321J.1 of .10 or more.

34 3. After the hearing the department shall order that the
35 revocation be either rescinded or sustained. In the event

1 that the revocation is sustained, the administrative hearing
2 officer who conducted the hearing has authority to issue a
3 temporary restricted license to the person whose motor vehicle
4 license or operating privilege was revoked. Upon receipt of
5 the decision of the department to sustain a revocation, the
6 person contesting the revocation shall have ten days to file a
7 request for review of the decision by the director. The
8 director or the director's designee shall review the decision
9 within fifteen days and shall either rescind or sustain the
10 revocation or order a new hearing. If the director orders a
11 new hearing, the department shall grant the person a new
12 hearing within thirty days of the director's order.

13 4. A person whose motor vehicle license or operating
14 privilege has been revoked under section 321J.9 or 321J.12 may
15 reopen a department hearing on the revocation if the person
16 submits a petition stating that new evidence has been
17 discovered which provides grounds for rescission of the
18 revocation, or if the person submits a petition stating that a
19 criminal action on a charge of a violation of section 321J.2
20 filed as a result of the same circumstances which resulted in
21 the revocation has resulted in a decision in which the court
22 has held that the peace officer did not have reasonable
23 grounds to believe that a violation of section 321J.2 had
24 occurred to support a request for or to administer a chemical
25 test or which has held the chemical test to be otherwise
26 inadmissible or invalid. Such a decision by the court is
27 binding on the department.

28 5. The department shall stay the revocation of a person's
29 motor vehicle license or operating privilege for the period
30 that the person is contesting the revocation under this
31 section or section 321J.14 if it is shown to the satisfaction
32 of the department that the new evidence is material and that
33 there were valid reasons for failure to present it in the
34 contested case proceeding before the department.

35 6. If the department fails to comply with the time

1 limitations of this section regarding granting a hearing,
2 review by the director or the director's designee, or granting
3 a new hearing, and if the request for a hearing or review by
4 the director was properly made under this section, the
5 revocation of the motor vehicle license or operating privilege
6 of the person who made the request for a hearing or review
7 shall be rescinded. This subsection shall not apply in those
8 cases in which a continuance to the hearing has been granted
9 at the request of either the person who requested the hearing
10 or the peace officer who requested or administered the
11 chemical test.

12 Sec. 14. NEW SECTION. 321J.14 JUDICIAL REVIEW.

13 Judicial review of an action of the department may be
14 sought in accordance with the terms of the Iowa administrative
15 procedure Act, chapter 17A. Notwithstanding the terms of that
16 chapter, a petition for judicial review may be filed in the
17 district court in the county where the alleged events occurred
18 or in the county in which the administrative hearing was held.

19 Sec. 15. NEW SECTION. 321J.15 EVIDENCE IN ANY ACTION.

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

31 Sec. 16. NEW SECTION. 321J.16 PROOF OF REFUSAL
32 ADMISSIBLE.

33 If a person refuses to submit to a chemical test, proof of
34 refusal is admissible in any civil or criminal action or
35 proceeding arising out of acts alleged to have been committed

1 while the person was operating a motor vehicle in violation of
2 section 321J.2.

3 Sec. 17. NEW SECTION. 321J.17 CIVIL PENALTY -- SEPARATE
4 FUND -- REINSTATEMENT.

5 When the department revokes a person's motor vehicle
6 license or nonresident operating privilege under this chapter,
7 the department shall assess the person a civil penalty of one
8 hundred dollars. The money collected by the department under
9 this section shall be transmitted to the treasurer of state
10 who shall deposit the money in a separate fund dedicated to
11 and used for the purposes of chapter 912, and for the
12 operation of a missing person clearinghouse and domestic abuse
13 registry by the department of public safety. A temporary
14 restricted license shall not be issued or a motor vehicle
15 license or nonresident operating privilege reinstated until
16 the civil penalty has been paid.

17 Sec. 18. NEW SECTION. 321J.18 OTHER EVIDENCE.

18 This chapter does not limit the introduction of any
19 competent evidence bearing on the question of whether a person
20 was under the influence of an alcoholic beverage or a drug,
21 including the results of chemical tests of specimens of blood,
22 breath or urine obtained more than two hours after the person
23 was operating a motor vehicle.

24 Sec. 19. NEW SECTION. 321J.19 INFORMATION RELAYED TO
25 OTHER STATES.

26 When it has been finally determined under this chapter that
27 a nonresident's privilege to operate a motor vehicle in this
28 state has been revoked or denied, the department shall give
29 information in writing of the action taken to the official in
30 charge of traffic control or public safety of the state of the
31 person's residence and of any state in which the person has a
32 license.

33 Sec. 20. NEW SECTION. 321J.20 TEMPORARY RESTRICTED
34 LICENSE.

35 1. The department may, on application, issue a temporary

1 restricted license to a person whose motor vehicle license is
2 revoked under this chapter allowing the person to drive to and
3 from the person's home and specified places at specified times
4 which can be verified by the department and which are required
5 by the person's full-time or part-time employment, continuing
6 health care or the continuing health care of another who is
7 dependent upon the person, continuing education while enrolled
8 in an educational institution on a part-time or full-time
9 basis and while pursuing a course of study leading to a
10 diploma, degree, or other certification of successful
11 educational completion, substance abuse treatment, and court-
12 ordered community service responsibilities if the person's
13 motor vehicle license has not been revoked under 321J.4,
14 321J.9, or 321J.12 within the previous six years and if any of
15 the following apply:

16 a. The person's motor vehicle license is revoked under
17 section 321J.4, subsection 1, 2, 4, or 6.

18 b. The person's motor vehicle license is revoked under
19 section 321J.9 and the person has entered a plea of guilty on
20 a charge of a violation of section 321J.2 which arose from the
21 same set of circumstances which resulted in the person's motor
22 vehicle license revocation under section 321J.9 and the guilty
23 plea is not withdrawn at the time of or after application for
24 the temporary restricted license.

25 c. The person's motor vehicle license is revoked under
26 section 321J.12.

27 However, a temporary restricted license may be issued if
28 the person's motor vehicle license is revoked under section
29 321J.9, and the revocation is a second revocation under this
30 chapter, and the first three hundred and sixty days of the
31 revocation have expired.

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

1 3. A person holding a temporary restricted license issued
2 by the department under this section shall not operate a motor
3 vehicle for pleasure.

4 Sec. 21. NEW SECTION. 321J.21 DRIVING WHILE LICENSE
5 DENIED OR REVOKED.

6 A person whose motor vehicle license or nonresident
7 operating privilege has been denied or revoked as provided in
8 this chapter and who drives a motor vehicle upon the highways
9 of this state while the license or privilege is denied or
10 revoked commits a serious misdemeanor. The department, upon
11 receiving the record of the conviction of a person under this
12 section upon a charge of driving a motor vehicle while the
13 license of the person was revoked or denied, shall extend the
14 period of revocation or denial for an additional like period,
15 and the department shall not issue a new license during the
16 additional period.

17 Sec. 22. NEW SECTION. 321J.22 COURT-ORDERED DRINKING
18 DRIVERS COURSE.

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

21 a. "Course for drinking drivers" means an approved course
22 designed to inform the offender about drinking and driving and
23 encourage the offender to assess the offender's own drinking
24 and driving behavior in order to select practical
25 alternatives.

26 b. "Satisfactory completion of a course" means receiving
27 at the completion of a course a grade from the course
28 instructor of "C" or "2.0," or better.

29 2. After a conviction for, or a plea of guilty of, a
30 violation of section 321J.2, the court in addition to its
31 power to commit the defendant for treatment of alcoholism
32 under section 321J.3, may order the defendant, at the
33 defendant's own expense, to enroll in, attend, and
34 successfully complete a course for drinking drivers. The
35 court may alternatively or additionally require the defendant

1 to seek evaluation, treatment or rehabilitation services under
2 section 125.33 at the defendant's expense and to furnish
3 evidence of successful completion. A copy of the order shall
4 be forwarded to the department.

5 3. The course provided in this section shall be offered on
6 a regular basis at each area school as defined in section
7 280A.2. Enrollment in the courses is not limited to persons
8 ordered to enroll, attend and successfully complete the course
9 under subsection 2, and any person convicted of a violation of
10 section 321J.2 who was not ordered to enroll in a course may
11 enroll in and attend a course for drinking drivers. The
12 course required by this section shall be taught by the area
13 schools under the department of public instruction and
14 approved by the department. The department of public
15 instruction shall establish reasonable fees to defray the
16 expense of obtaining classroom space, instructor salaries, and
17 class materials. A person shall not be denied enrollment in a
18 course by reason of the person's indigency.

19 4. An employer shall not discharge a person from
20 employment solely for the reason of work absence to attend a
21 course required by this section. Any employer who violates
22 this section is liable for damages which include but are not
23 limited to actual damages, court costs, and reasonable
24 attorney fees. The person may also petition the court for
25 imposition of a cease and desist order against the person's
26 employer and for reinstatement to the person's previous
27 position of employment.

28 5. The department of public instruction shall prepare a
29 list of the locations of the courses taught under this
30 section, the dates and times taught, the procedure for
31 enrollment, and the schedule of course fees. The list shall
32 be kept current and a copy of the list shall be sent to each
33 court having jurisdiction over offenses provided in this
34 chapter.

35 6. The department of public instruction shall maintain

1 enrollment, attendance, successful and unsuccessful
2 completion data on the persons ordered to enroll, attend and
3 successfully complete a course for drinking drivers. This
4 data shall be forwarded to the court.

5 Sec. 23. NEW SECTION. ROADBLOCKS CONDUCTED BY LAW
6 ENFORCEMENT AGENCIES.

7 1. The law enforcement agencies of this state may conduct
8 emergency vehicle roadblocks in response to immediate threats
9 to the health, safety, and welfare of the public; and
10 otherwise may conduct routine vehicle roadblocks only as
11 provided in this section. Routine vehicle roadblocks may be
12 conducted to enforce compliance with the law regarding any of
13 the following:

- 14 a. The licensing of operators of motor vehicles.
- 15 b. The registration of motor vehicles.
- 16 c. The safety equipment required on motor vehicles.
- 17 d. The provisions of chapters 109 and 110.

18 2. Any routine vehicle roadblock conducted under this
19 section shall meet the following requirements:

- 20 a. The location of the roadblock, the time during which
21 the roadblock will be conducted, and the procedure to be used
22 while conducting the roadblock, shall be determined by
23 policymaking administrative officers of the law enforcement
24 agency.
- 25 b. The roadblock location shall be selected for its safety
26 and visibility to oncoming motorists, and adequate advance
27 warning signs, illuminated at night or under conditions of
28 poor visibility, shall be erected to provide timely
29 information to approaching motorists of the roadblock and its
30 nature.
- 31 c. There shall be uniformed officers and marked official
32 vehicles of the law enforcement agency or agencies involved,
33 in sufficient quantity and visibility to demonstrate the
34 official nature of the roadblock.

35 d. The selection of motor vehicles to be stopped shall not

1 be arbitrary.

2 e. The roadblock shall be conducted to assure the safety
3 of and to minimize the inconvenience of the motorists
4 involved.

5 Sec. 24. NEW SECTION. 123.151 POSTING NOTICE ON DRUNK
6 DRIVING LAWS REQUIRED.

7 State liquor stores and holders of liquor control licenses,
8 wine permits, or beer permits shall post in a prominent place
9 in the state liquor stores or licensed premises notice
10 explaining the operation of and penalties of the laws which
11 prohibit the operation of a motor vehicle by a person who is
12 intoxicated. The size, print size, location, and content of
13 the notice shall be established by rule of the department.

14 Sec. 25. Section 125.44, unnumbered paragraph 6, Code
15 1985, is amended to read as follows:

16 The department is liable for the cost of care, treatment,
17 and maintenance of a substance abuser admitted to the facility
18 voluntarily or pursuant to section 125.75, 125.81, or 125.91
19 or section ~~321-2817-321-2837~~-subsection-3, 321J.3 or 204.409,
20 subsection 2 only to those facilities that have a contract
21 with the department under this section, only for the amount
22 computed according to and within the limits of liability
23 prescribed by this section, and only when the substance abuser
24 is unable to pay the costs and there is no other person, firm,
25 corporation or insurance company bound to pay the costs.

26 Sec. 26. NEW SECTION. 217A.30 ASSIGNMENT TO TREATMENT
27 FACILITIES.

28 1. The director of the department of corrections may
29 assign an offender committed to the custody of the director
30 for a felony violation of chapter 321J to a facility which
31 meets all of the following requirements:

32 a. Is a treatment facility meeting the licensure standards
33 of the division of substance abuse of the department of public
34 health.

35 b. Is a facility meeting applicable standards of the

1 American corrections association.

2 c. Is a facility which meets any other rule or requirement
3 adopted by the department pursuant to chapter 17A.

4 2. The assignment of an offender pursuant to subsection 1
5 shall be for purposes of substance abuse treatment and
6 education, and may include work programs for the offender at
7 times when the offender is not in substance abuse treatment or
8 education.

9 3. Offenders assigned to a facility pursuant to this
10 section shall not be included in calculations used to
11 determine the existence of a prison overcrowding state of
12 emergency.

13 4. The director shall prepare proposed administrative
14 rules for the consideration of the administrative rules review
15 committee for the funding of the program by means of self
16 contribution by the offenders, insurance reimbursement on
17 behalf of offenders, or other forms of funding, program
18 structure, criteria for the evaluation of facilities and
19 offenders for participation in the programs, and all other
20 issues the director shall deem appropriate. Proposed rules
21 prepared pursuant to this subsection shall be submitted to the
22 administrative rules review committee on or before September
23 15, 1986.

24 Sec. 27. Section 307.27, subsection 5, Code 1985, is
25 amended to read as follows:

26 5. Administer the provisions of chapters 321A, 321B, 321E,
27 and 321F, and 321J relating to motor vehicle financial
28 responsibility, the implied consent law, the movement of
29 vehicles of excessive size and weight and the leasing and
30 renting of vehicles.

31 Sec. 28. Section 321.178, subsection 1, unnumbered
32 paragraph 1, Code 1985, is amended to read as follows:

33 An approved driver education course as programmed by the
34 department of public instruction shall consist of at least
35 thirty clock hours of classroom instruction, and six or more

1 clock hours of laboratory instruction of which at least three
2 clock hours shall consist of street or highway driving. An
3 approved course shall include a minimum of two hours of
4 classroom instruction concerning substance abuse as part of
5 its curriculum. After the student has completed three clock
6 hours of street or highway driving and has demonstrated to the
7 instructor an ability to properly operate a motor vehicle and
8 upon written request of a parent or guardian, the instructor
9 may waive the remaining required laboratory instruction.

10 Sec. 29. Section 321.191, unnumbered paragraph 2, Code
11 1985, is amended to read as follows:

12 There shall be a fee of twenty dollars for reinstatement of
13 a chauffeur's license or operator's license which is, after
14 notice and opportunity for hearing, suspended or revoked
15 pursuant to sections 321.193, 321.209 and 321.210, except
16 subsection 4 thereof, 321.513, 321.560, 321A.6, and chapter
17 ~~321B~~ 321J. The twenty-dollar fee shall be collected only if
18 the person whose license was suspended or revoked was served
19 personally with notice. If the person whose license was
20 suspended or revoked was served notice by certified mail, the
21 reinstatement fee shall be ten dollars.

22 Sec. 30. Section 321.196, Code Supplement 1985, is amended
23 by adding the following new unnumbered paragraph:

24 NEW UNNUMBERED PARAGRAPH. Prior to the renewal of a
25 license pursuant to this section, the department shall issue
26 to each applicant information on the law relating to the
27 operation of a motor vehicle while intoxicated and statistical
28 information relating to the number of injuries and fatalities
29 occurring as a result of the operation of motor vehicles while
30 intoxicated.

31 Sec. 31. Section 321.209, subsection 2, Code 1985, is
32 amended by striking the subsection.

*33 Sec. 32. Section 321.213, Code 1985, is amended to read as
34 follows:

35 321.213 LICENSE SUSPENSIONS OR REVOCATIONS DUE TO

1 VIOLATIONS BY JUVENILE DRIVERS.

2 Upon the entering of an order at the conclusion of an
3 adjudicatory hearing under section 232.47 that the child
4 violated a provision of this chapter or chapter 321A or
5 chapter 321J for which the penalty is greater than a simple
6 misdemeanor, ~~or that the child refused to submit to chemical~~
7 ~~testing under section 321B.4;~~ the clerk of the juvenile court
8 in the adjudicatory hearing shall forward a copy of the
9 adjudication to the department. Notwithstanding section
10 232.55, a final adjudication in a juvenile court that the
11 child violated a provision of this chapter or chapter 321A or
12 chapter 321J constitutes a final conviction of a violation of
13 a provision of this chapter or chapter 321A or chapter 321J
14 for purposes of section 321.189, subsection 2, paragraph "b",
15 and sections 321.193, 321.194, 321.200, 321.209, 321.210,
16 321.215, and 321A.17. ~~Notwithstanding section 232.55, the~~
17 ~~director shall revoke the license or permit of a child under~~
18 ~~section 321B.13 upon receipt of a copy of the final~~
19 ~~adjudication in a juvenile court that the child refused to~~
20 ~~submit to chemical testing under section 321B.4.~~

21 Sec. 33. Section 321.218, unnumbered paragraph 1, Code
22 Supplement 1985, is amended to read as follows:

23 A person whose operator's or chauffeur's license or driving
24 privilege has been denied, canceled, suspended or revoked as
25 provided in this chapter, and who drives a motor vehicle upon
26 the highways of this state while the license or privilege is
27 denied, canceled, suspended, or revoked commits a simple
28 misdemeanor. However, a person whose license or driving
29 privilege has been revoked under section 321.209 ~~or chapter~~
30 ~~321B~~ and who drives a motor vehicle upon the highways of this
31 state while the license or privilege is revoked commits a
32 serious misdemeanor. The sentence imposed under this section
33 shall not be suspended by the court, notwithstanding section
34 907.3 or any other statute. The department, upon receiving
35 the record of the conviction of a person under this section

1 upon a charge of driving a motor vehicle while the license of
2 the person was suspended or revoked, shall, except for
3 licenses suspended under section 321.513, extend the period of
4 suspension or revocation for an additional like period, and
5 the department shall not issue a new license during the
6 additional period.

7 Sec. 34. Section 321.228, subsection 2, Code 1985, is
8 amended to read as follows:

9 2. The provisions of sections 321.261 to 321.274~~7~~-section
10 and sections 321.277 and ~~sections~~ 321.280 ~~to-321-282~~ shall
11 apply upon highways and elsewhere throughout the state.

12 Sec. 35. Section 321.233, unnumbered paragraph 1, Code
13 Supplement 1985, is amended to read as follows:

14 This chapter, except ~~section~~ sections 321.277 and ~~sections~~
15 321.280 ~~to-321-282~~ does not apply to persons and motor
16 vehicles and other equipment while actually engaged in work
17 upon the surface of a highway officially closed to traffic but
18 does apply to such persons and vehicles when traveling to or
19 from such work. The minimum speed restriction of section
20 321.285, subsection 8, and the provisions of sections 321.297
21 and 321.298 do not apply to road workers operating maintenance
22 equipment owned by or under lease to any state or local
23 authority while engaged in road maintenance, road blading,
24 snow and ice control and removal, and granular resurfacing
25 work on a highway, whether or not the highway is closed to
26 traffic.

27 Sec. 36. Section 321.555, subsection 1, paragraph b, Code
28 1985, is amended to read as follows:

29 b. Operating a motor vehicle in violation of section
30 ~~321-281~~ 321J.2.

31 Sec. 37. Section 321A.17, subsection 1, Code 1985, is
32 amended to read as follows:

33 1. Whenever the director, under any law of this state,
34 suspends or revokes the license of any person upon receiving
35 record of a conviction or a forfeiture of bail or revokes the

1 license of any person pursuant to chapter ~~321B~~ 321J, the
2 director shall also suspend the registration for all motor
3 vehicles registered in the name of the person, except that the
4 director shall not suspend the registration, unless otherwise
5 required by law, if the person has previously given or
6 immediately gives and thereafter maintains proof of financial
7 responsibility with respect to all motor vehicles registered
8 by the person.

9 Sec. 38. Section 331.653, subsection 33, Code Supplement
10 1985, is amended to read as follows:

11 33. Carry out duties relating to the enforcement of laws
12 prohibiting the operation of a motor vehicle while under the
13 influence of an alcoholic beverage as provided in chapter ~~321B~~
14 321J.

15 Sec. 39. Section 602.8102, subsection 51, Code Supplement
16 1985, is amended to read as follows:

17 51. Forward to the department of transportation a copy of
18 the record of each conviction or forfeiture of bail of a
19 person charged with the violation of the laws regulating the
20 operation of vehicles on public roads as provided in sections
21 ~~321-281~~ 321J.2 and 321.491.

22 Sec. 40. NEW SECTION. 707.6A HOMICIDE BY VEHICLE.

23 1. A person commits a class "D" felony when the person
24 unintentionally causes the death of another by either of the
25 following means:

26 a. Operating a motor vehicle while under the influence of
27 alcohol or a drug or a combination of such substances or while
28 having an alcohol concentration of .10 or more, in violation
29 of section 321J.2.

30 b. Driving a motor vehicle in a reckless manner with
31 willful or wanton disregard for the safety of persons or
32 property, in violation of section 321.277.

33 2. A person commits an aggravated misdemeanor when the
34 person unintentionally causes the death of another by
35 operating a motor vehicle in any of the following manners:

- 1 a. Drag racing, in violation of section 321.278.
2 b. Eluding or attempting to elude a pursuing law
3 enforcement vehicle, in violation of section 321.279.
4 3. As used in this section, "motor vehicle" includes any
5 vehicle defined as a motor vehicle in section 321.1.

6 Sec. 41. Section 804.31, unnumbered paragraph 2, Code
7 Supplement 1985, is amended to read as follows:

8 This section does not prohibit the request for and
9 administration of a preliminary breath screening test or the
10 request for and administration of a chemical test of a body
11 substance or substances under chapter ~~321B~~ 321J prior to the
12 arrival of a qualified interpreter for a hearing impaired
13 person who is believed to have committed a violation of
14 section ~~321-281~~ 321J.2. However, upon the arrival of the
15 interpreter the officer who requested the chemical test shall
16 explain through the interpreter the reason for the testing,
17 the consequences of the person's consent or refusal, and the
18 ramifications of the results of the test, if one was
19 administered.

* 20 Sec. 42. Section 907.3, subsection 1, paragraph g, Code
21 1985, is amended to read as follows:

22 g. The offense is a violation of section ~~321-281~~ 321J.2
23 and, within the previous six years, the person has been
24 convicted of a violation of that section or the person's
25 driver's license has been revoked pursuant to ~~that-section-or~~
26 ~~chapter-321B~~ section 321J.4, 321J.9, or 321J.12.

27 Sec. 43. Section 912.1, subsection 4, Code 1985, is
28 amended to read as follows:

29 4. "Crime" means conduct that occurs or is attempted in
30 this state, poses a substantial threat of personal injury or
31 death, and is punishable as a felony, an aggravated
32 misdemeanor, or a serious misdemeanor, or would be so
33 punishable but for the fact that the person engaging in the
34 conduct lacked the capacity to commit the crime under the laws
35 of this state. "Crime" does not include conduct arising out

1 of the ownership, maintenance, or use of a motor vehicle,
2 motorcycle, motorized bicycle, train, boat, or aircraft except
3 for violations of section ~~321B.2~~ 321J.2 or when the intention
4 is to cause personal injury or death. A plea or verdict of
5 guilty of a charge under section ~~321B.2~~ 321J.2 or a license
6 revocation under section ~~321B.13~~ 321J.9 or ~~321B.16~~ 321J.12
7 shall be considered by the department as evidence of a
8 violation of section ~~321B.2~~ 321J.2 for the purposes of this
9 chapter.

10 Sec. 44. Section 321.281, Code Supplement 1985, is
11 repealed.

12 Sec. 45. Section 321.282, Code 1985, is repealed.

13 Sec. 46. Section 321.283, Code Supplement 1985, is
14 repealed.

15 Sec. 47. Chapter 321B, Code 1985 and Code Supplement 1985,
16 is repealed.

17 Sec. 48. References in chapter 321J to actions which
18 occurred previously under "this chapter" or "this section"
19 include the preceding Code chapter or section which covers the
20 same or substantially similar actions.

21 Sec. 49. This Act applies to any judicial or
22 administrative action which arises due to violation of a
23 section of this Act or an implementing rule, and which occurs
24 after the effective date of this Act. This Act also applies
25 to any judicial or administrative action which arose prior to
26 the effective date of this Act due to a violation of a
27 preceding Code section or implementing rule which was the same
28 or substantially similar to a section in this Act, or an
29 implementing rule if the defendant or defendant's counsel
30 requests that the action proceed under this Act.

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HOUSE FILE 2493

S-5969

1 Amend House File 2493 as amended, passed and
2 reprinted by the House as follows:
3 1. By striking everything after the enacting
4 clause and inserting the following:
5 "Section 1. NEW SECTION. 321J.1 DEFINITIONS.
6 As used in this chapter unless the context
7 otherwise requires:
8 1. "Alcohol concentration" means the number of
9 grams of alcohol per any of the following:
10 a. One hundred milliliters of blood.
11 b. Two hundred ten liters of breath.
12 c. Sixty-seven milliliters of urine.
13 2. "Alcoholic beverage" includes alcohol, wine,
14 spirits, beer, or any other beverage which contains
15 ethyl alcohol and is fit for human consumption.
16 3. "Arrest" includes but is not limited to taking
17 into custody pursuant to section 232.19.
18 4. "Department" means the state department of
19 transportation.
20 5. "Director" means the director of transportation
21 or the director's designee.
22 6. "Motor vehicle license" means any license or
23 permit issued to a person to operate a motor vehicle
24 in this state, including but not limited to an
25 operator, chauffeur, or motorized bicycle license and
26 an instruction or temporary permit.
27 7. "Peace officer" means:
28 a. A member of the highway patrol.
29 b. A police officer under civil service as
30 provided in chapter 400.
31 c. A sheriff.
32 d. A regular deputy sheriff who has had formal
33 police training.
34 e. Any other law enforcement officer who has
35 satisfactorily completed an approved course relating
36 to motor vehicle operators under the influence of
37 alcoholic beverages at the Iowa law enforcement
38 academy or a law enforcement training program approved
39 by the department of public safety.
40 8. "Serious injury" means a bodily injury which
41 creates a substantial risk of death, or which causes
42 serious permanent disfigurement, or which causes
43 protracted loss or impairment of the function of any
44 bodily organ or major bodily member, or which causes
45 the loss of any bodily member.
46 Sec. 2. NEW SECTION. 321J.2 OPERATING WHILE
47 UNDER THE INFLUENCE OF ALCOHOL OR A DRUG OR WHILE
48 HAVING AN ALCOHOL CONCENTRATION OF .10 OR MORE. (OWI)
49 1. A person commits the offense of operating while
50 intoxicated if the person operates a motor vehicle in

1 this state in either of the following conditions:
2 a. While under the influence of an alcoholic
3 beverage or other drug or a combination of such
4 substances.
5 b. While having an alcohol concentration as
6 defined in section 321J.1 of .10 or more.
7 2. A person who violates this section commits:
8 a. A serious misdemeanor for the first offense and
9 shall be imprisoned in the county jail for not less
10 than forty-eight hours to be served as ordered by the
11 court, less credit for any time the person was
12 confined in a jail or detention facility following
13 arrest, and assessed a fine of not less than five
14 hundred dollars nor more than one thousand dollars.
15 As an alternative to a portion or all of the fine, the
16 court may order the person to perform not more than
17 two hundred hours of unpaid community service. The
18 court may accommodate the sentence to the work
19 schedule of the defendant.
20 b. An aggravated misdemeanor for a second offense
21 and shall be imprisoned in the county jail or
22 community-based correctional facility not less than
23 seven days, which minimum term cannot be suspended
24 notwithstanding section 901.5, subsection 3 and
25 section 907.3, subsection 2, and assessed a fine of
26 not less than seven hundred fifty dollars.
27 c. A class "D" felony for a third offense and each
28 subsequent offense and shall be imprisoned in the
29 county jail or community-based correctional facility
30 for not less than thirty days, which minimum term
31 cannot be suspended notwithstanding section 901.5,
32 subsection 3, and section 907.3, subsection 2, and
33 assessed a fine of not less than seven hundred fifty
34 dollars.
35 3. No conviction for, deferred judgment for, or
36 plea of guilty to, a violation of this section which
37 occurred more than six years prior to the date of the
38 violation charged shall be considered in determining
39 that the violation charged is a second, third, or
40 subsequent offense. For the purpose of determining if
41 a violation charged is a second, third, or subsequent
42 offense, deferred judgments pursuant to section 907.3
43 for violations of this section and convictions or the
44 equivalent of deferred judgments for violations in any
45 other states under statutes substantially
46 corresponding to this section shall be counted as
47 previous offenses. The courts shall judicially notice
48 the statutes of other states which define offenses
49 substantially equivalent to the one defined in this
50 section and can therefore be considered corresponding

1 statutes. Each previous violation shall be considered
2 a separate previous offense without regard to whether
3 each was complete as to commission and conviction or
4 deferral of judgment following or prior to any other
5 previous violation.

6 4. A person shall not be convicted and sentenced
7 for more than one violation of this section if the
8 violation is shown to have been committed by either or
9 both of the means described in subsection 1 in the
10 same occurrence.

11 5. The clerk of court shall immediately certify to
12 the department a true copy of each order entered with
13 respect to deferral of judgment, deferral of sentence
14 or pronouncement of judgment and sentence for a
15 defendant under this section.

16 6. This section does not apply to a person
17 operating a motor vehicle while under the influence of
18 a drug if the substance was prescribed for the person
19 and was taken under the prescription and in accordance
20 with the directions of a medical practitioner as
21 defined in section 155.3, subsection 11, if there is
22 no evidence of the consumption of alcohol and the
23 medical practitioner had not directed the person to
24 refrain from operating a motor vehicle.

25 7. In any prosecution under this section, evidence
26 of the results of analysis of a specimen of the
27 defendant's blood, breath, or urine is admissible upon
28 proof of a proper foundation. The alcohol
29 concentration established by the results of an
30 analysis of a specimen of the defendant's blood,
31 breath, or urine withdrawn within two hours after the
32 defendant was driving or in physical control of a
33 motor vehicle is presumed to be the alcohol
34 concentration at the time of driving or being in
35 physical control of the motor vehicle.

36 8. The court shall order a defendant convicted of
37 or receiving a deferred judgment for a violation of
38 this section to make restitution, in an amount not to
39 exceed two thousand dollars, for damages resulting
40 directly from the violation. An amount paid pursuant
41 to this restitution order shall be credited toward any
42 adverse judgment in a subsequent civil proceeding
43 arising from the same occurrence. However, other than
44 establishing a credit, a restitution proceeding
45 pursuant to this section shall not be given
46 evidentiary or preclusive effect in a subsequent civil
47 proceeding arising from the same occurrence.

48 9. In any prosecution under this section, the
49 results of a chemical test may not be used to prove a
50 violation of paragraph "b" of subsection 1 if the

1 alcohol concentration indicated by the chemical test
2 minus the established margin of error inherent in the
3 device or method used to conduct the chemical test
4 does not equal an alcohol concentration of .10 or
5 more.

6 Sec. 3. NEW SECTION. 321J.3 COURT ORDERED
7 SUBSTANCE ABUSE EVALUATION OR TREATMENT.

8 1. On a conviction for a violation of section
9 321J.2, the court may order the defendant to attend a
10 course for drinking drivers under section 321J.22. If
11 the defendant submitted to a chemical test on arrest
12 for the violation of section 321J.2 and the test
13 indicated an alcohol concentration of .20 or higher,
14 the court shall order the defendant, on conviction, to
15 undergo a substance abuse evaluation and the court may
16 order the defendant to follow the recommendations
17 proposed in the substance abuse evaluation for
18 appropriate substance abuse treatment for the
19 defendant. Court ordered substance abuse treatment is
20 subject to the periodic reporting requirements of
21 section 125.86. If a defendant is committed by the
22 court to a substance abuse treatment facility, the
23 administrator of the facility shall report to the
24 court when it is determined that the defendant has
25 received the maximum benefit of treatment at the
26 facility and the defendant shall be released from the
27 facility. The time for which the defendant is
28 committed for treatment shall be credited against the
29 defendant's sentence. The court may prescribe the
30 length of time for the evaluation and treatment or it
31 may request that the area school conducting the course
32 for drinking drivers which the person is ordered to
33 attend or the treatment program to which the person is
34 committed immediately report to the court when the
35 person has received maximum benefit from the course
36 for drinking drivers or treatment program or has
37 recovered from the person's addiction, dependency, or
38 tendency to chronically abuse alcohol or drugs. A
39 person committed under this section who does not
40 possess sufficient income or estate to make payment of
41 the costs of the treatment in whole or in part shall
42 be considered a state patient and the costs of
43 treatment shall be paid as provided in section 125.44.
44 A defendant who fails to carry out the order of the
45 court or who fails to successfully complete or attend
46 a course for drinking drivers or an ordered substance
47 abuse treatment program shall be confined in the
48 county jail for twenty days in addition to any other
49 imprisonment ordered by the court or may be ordered to
50 perform unpaid community service work, and shall be

1 placed on probation for one year with a violation of
2 this probation punishable as contempt of court.

3 2. As a condition of a suspended sentence or
4 portion of sentence for a second, third, or subsequent
5 offense in violation of section 321J.2, the court upon
6 hearing may commit the defendant for inpatient
7 treatment of alcoholism or drug addiction or
8 dependency to any hospital, institution, or community
9 correctional facility in Iowa providing such
10 treatment. The time for which the defendant is
11 committed for treatment shall be credited against the
12 defendant's sentence. The court may prescribe the
13 length of time for the evaluation and treatment or it
14 may request that the hospital to which the person is
15 committed immediately report to the court when the
16 person has received maximum benefit from the program
17 of the hospital or institution or has recovered from
18 the person's addiction, dependency, or tendency to
19 chronically abuse alcohol or drugs. A person
20 committed under this section who does not possess
21 sufficient income or estate to make payment of the
22 costs of the treatment in whole or in part shall be
23 considered a state patient and the costs of treatment
24 shall be paid as provided in section 125.44.

25 Sec. 4. NEW SECTION. 321J.4 REVOCATION OF MOTOR
26 VEHICLE LICENSE ON CONVICTION OR COURT ORDER.

27 1. If a defendant is convicted of a violation of
28 section 321J.2 and the defendant's motor vehicle
29 license or nonresident operating privilege has not
30 been revoked under section 321J.9 or 321J.12 for the
31 occurrence from which the arrest arose, the department
32 shall revoke the defendant's motor vehicle license or
33 nonresident operating privilege for one hundred eighty
34 days if the defendant has had no previous conviction
35 under section 321J.2 or revocation under section
36 321J.9 or 321J.12 within the previous six years and
37 for one year if the defendant has had one or more
38 previous convictions or revocations under those
39 sections within the previous six years.

40 2. If the court defers judgment pursuant to
41 section 907.3 for a violation of section 321J.2, the
42 court shall order the department to revoke the
43 defendant's motor vehicle license or nonresident
44 operating privilege for a period of not less than
45 thirty days nor more than ninety days if the
46 defendant's motor vehicle license or nonresident
47 operating privilege has not been revoked under section
48 321J.9 or 321J.12 for the occurrence from which the
49 arrest arose. The court shall immediately require the
50 defendant to surrender to it all Iowa licenses or

1 permits held by the defendant, which the court shall
2 forward to the department with a copy of the order
3 deferring judgment.

4 3. a. Upon a plea or verdict of guilty of a third
5 or subsequent violation of section 321J.2, the court
6 shall order the department to revoke the defendant's
7 motor vehicle license or nonresident operating
8 privilege for a period of six years. The court shall
9 require the defendant to surrender to it all Iowa
10 licenses or permits held by the defendant, which the
11 court shall forward to the department with a copy of
12 the order for revocation.

13 b. After two years from the date of the order for
14 revocation, the defendant may apply to the court for
15 restoration of the defendant's eligibility for a motor
16 vehicle license. The application may be granted only
17 if all of the following are shown by the defendant by
18 a preponderance of the evidence:

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

24 (2) The defendant has not been convicted, since
25 the date of the revocation order, of any subsequent
26 violations of section 321J.2 or 123.46, or any
27 comparable city or county ordinance, and the defendant
28 has not, since the date of the revocation order,
29 submitted to a chemical test under this chapter that
30 indicated an alcohol concentration as defined in
31 section 321J.1 of .10 or more, or refused to submit to
32 chemical testing under this chapter.

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

38 (4) The defendant's motor vehicle license is not
39 currently subject to suspension or revocation for any
40 other reason.

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

45 4. Upon a plea or verdict of guilty of a violation
46 of section 321J.2 which involved a personal injury,
47 the court shall determine in open court, from
48 consideration of the information in the file and any
49 other evidence the parties may submit, whether a
50 serious injury was sustained by any person other than

1 the defendant and, if so, whether the defendant's
2 conduct in violation of section 321J.2 caused the
3 serious injury. If the court so determines, the court
4 shall order the department to revoke the defendant's
5 motor vehicle license or nonresident operating
6 privilege for a period of one year in addition to any
7 other period of suspension or revocation. The
8 defendant shall surrender to the court any Iowa
9 license or permit and the court shall forward it to
10 the department with a copy of the order for
11 revocation.

12 5. Upon a plea or verdict of guilty of a violation
13 of section 321J.2 which involved a death, the court
14 shall determine in open court, from consideration of
15 the information in the file and any other evidence the
16 parties may submit, whether a death occurred and, if
17 so, whether the defendant's conduct in violation of
18 section 321J.2 caused the death. If the court so
19 determines, the court shall order the department to
20 revoke the defendant's motor vehicle license or
21 nonresident operating privilege for a period of six
22 years. The defendant shall surrender to the court any
23 Iowa license or permit and the court shall forward it
24 to the department with a copy of the order for
25 revocation.

26 6. If a license or permit to operate a motor
27 vehicle is revoked or denied under this section or
28 section 321J.9 or 321J.12, the period of revocation or
29 denial shall be the period provided for such a
30 revocation or until the defendant reaches the age of
31 eighteen whichever period is longer.

32 Sec. 5. NEW SECTION. 321J.5 PRELIMINARY
33 SCREENING TEST.

34 When a peace officer has reasonable grounds to
35 believe that a motor vehicle operator may be violating
36 or has violated section 321J.2, or the operator has
37 been involved in a motor vehicle collision resulting
38 in injury or death, the peace officer may request the
39 operator to provide a sample of the operator's breath
40 for a preliminary screening test using a device
41 approved by the commissioner of public safety for that
42 purpose. The results of this preliminary screening
43 test may be used for the purpose of deciding whether
44 an arrest should be made and whether to request a
45 chemical test authorized in this chapter, but shall
46 not be used in any court action except to prove that a
47 chemical test was properly requested of a person
48 pursuant to this chapter.

49 Sec. 6. NEW SECTION. 321J.6 IMPLIED CONSENT TO
50 TEST.

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

16 a. A peace officer has lawfully placed the person
17 under arrest for violation of section 321J.2.

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

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

23 d. The preliminary breath screening test was
24 administered and it indicated an alcohol concentration
25 as defined in section 321J.1 of .10 or more.

26 e. The preliminary breath screening test was
27 administered and it indicated an alcohol concentration
28 of less than .10 and the peace officer has reasonable
29 grounds to believe that the person was under the
30 influence of a drug other than alcohol or a
31 combination of alcohol and another drug.

32 2. The peace officer shall determine which of the
33 three substances, breath, blood, or urine, shall be
34 tested. Refusal to submit to a chemical test of urine
35 or breath is deemed a refusal to submit, and section
36 321J.9 applies. A refusal to submit to a chemical
37 test of blood is not deemed a refusal to submit, but
38 in that case, the peace officer shall then determine
39 which one of the other two substances shall be tested
40 and shall offer the test. If the peace officer fails
41 to offer a test within two hours after the preliminary
42 screening test is administered or refused or the
43 arrest is made, whichever occurs first, a test is not
44 required, and there shall be no revocation under
45 section 321J.9.

46 3. Notwithstanding subsection 2, if the peace
47 officer has reasonable grounds to believe that the
48 person was under the influence of a drug other than
49 alcohol or a combination of alcohol and another drug,
50 a urine test may be required even after a blood or

1 breath test has been administered. Section 321J.9
2 applies to a refusal to submit to a chemical test of
3 urine requested under this subsection.

4 Sec. 7. NEW SECTION. 321J.7 DEAD OR UNCONSCIOUS
5 PERSONS.

6 A person who is dead, unconscious, or otherwise in
7 a condition rendering the person incapable of consent
8 or refusal is deemed not to have withdrawn the consent
9 provided by section 321J.6, and the test may be given
10 if a licensed physician certifies in advance of the
11 test that the person is dead, unconscious, or
12 otherwise in a condition rendering that person
13 incapable of consent or refusal.

14 Sec. 8. NEW SECTION. 321J.8 STATEMENT OF
15 OFFICER.

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

19 1. If the person refuses to submit to the test,
20 the person's license or operating privilege will be
21 revoked by the department for the applicable period
22 under section 321J.9.

23 2. If the person submits to the test and the
24 results indicate an alcohol concentration as defined
25 in section 321J.1 of .10 or more, the person's license
26 or operating privilege will be revoked by the
27 department for the applicable period under section
28 321J.12.

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

31 Sec. 9. NEW SECTION. 321J.9 REFUSAL TO SUBMIT --
32 REVOCATION.

33 If a person refuses to submit to the chemical
34 testing, a test shall not be given, but the
35 department, upon the receipt of the peace officer's
36 certification, subject to penalty for perjury, that
37 the officer had reasonable grounds to believe the
38 person to have been operating a motor vehicle in
39 violation of section 321J.2, that specified conditions
40 existed for chemical testing pursuant to section
41 321J.6, and that the person refused to submit to the
42 chemical testing, shall revoke the person's motor
43 vehicle license and any nonresident operating
44 privilege for a period of two hundred forty days if
45 the person has no previous revocation within the
46 previous six years under this chapter; and five
47 hundred forty days if the person has one or more
48 previous revocations within the previous six years
49 under this chapter; or if the person is a resident
50 without a license or permit to operate a motor vehicle

1 in this state, the department shall deny to the person
2 the issuance of a license or permit for the same
3 period a license or permit would be revoked, subject
4 to review as provided in this chapter. The effective
5 date of revocation shall be twenty days after the
6 department has mailed notice of revocation to the
7 person by certified mail or, on behalf of the
8 department, a peace officer offering or directing the
9 administration of a chemical test may serve immediate
10 notice of intention to revoke and of revocation on a
11 person who refuses to permit chemical testing. If the
12 peace officer serves that immediate notice, the peace
13 officer shall take the Iowa license or permit of the
14 driver, if any, and issue a temporary license
15 effective for only twenty days. The peace officer
16 shall immediately send the person's license to the
17 department along with the officer's certificate
18 indicating the person's refusal to submit to chemical
19 testing.

20 Sec. 10. NEW SECTION. 321J.10 TESTS PURSUANT TO
21 WARRANTS.

22 1. Refusal to consent to a test under section
23 321J.6 does not prohibit the withdrawal of a specimen
24 for chemical testing pursuant to a search warrant
25 issued in the investigation of a suspected violation
26 of section 707.5 if all of the following grounds
27 exist:

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

30 b. There are reasonable grounds to believe that
31 one or more of the persons whose driving may have been
32 the proximate cause of the accident was violating
33 section 321J.2 at the time of the accident.

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

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

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

48 b. The person applying for the warrant shall
49 prepare a duplicate warrant and read the duplicate
50 warrant, verbatim, to the magistrate who shall enter,

1 verbatim, what is read to the magistrate on a form
2 that will be considered the original warrant. The
3 magistrate may direct that the warrant be modified.

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

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

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

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

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

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

45 4. Search warrants issued under this section shall
46 authorize and direct peace officers to secure the
47 withdrawal of blood specimens by medical personnel
48 under section 321J.11. Reasonable care shall be
49 exercised to ensure the health and safety of the
50 persons from whom specimens are withdrawn in execution

1 of the warrants. If a person from whom a specimen is
2 to be withdrawn objects to the withdrawal of blood,
3 and the person is capable of giving a specimen of
4 breath, and a direct breath testing instrument is
5 readily available, the warrant may be executed by the
6 withdrawal of a specimen of breath for chemical
7 testing.

8 5. The act of any person knowingly resisting or
9 obstructing the withdrawal of a specimen pursuant to a
10 search warrant issued under this section constitutes a
11 contempt punishable by a fine not exceeding one
12 thousand dollars or imprisonment in a county jail not
13 exceeding one year or by both such fine and
14 imprisonment. Also, if the withdrawal of a specimen
15 is so resisted or obstructed, sections 321J.9 and
16 321J.16 apply.

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

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

24 8. Subsections 1 to 7 of this section do not apply
25 where a test may be administered under section 321J.7.

26 9. Medical personnel who use reasonable care and
27 accepted medical practices in withdrawing blood
28 specimens are immune from liability for their actions
29 in complying with requests made of them pursuant to
30 search warrants or pursuant to section 321J.11.

31 Sec. 11. NEW SECTION. 321J.11 TAKING SAMPLE FOR
32 TEST.

33 Only a licensed physician, physician's assistant as
34 defined in section 148C.1, subsection 6, medical
35 technologist, or registered nurse, acting at the
36 request of a peace officer, may withdraw a specimen of
37 blood for the purpose of determining the alcohol
38 concentration or the presence of drugs. However, any
39 peace officer, using devices and methods approved by
40 the commissioner of public safety, may take a specimen
41 of a person's breath or urine for the purpose of
42 determining the alcohol concentration or the presence
43 of drugs. Only new equipment kept under strictly
44 sanitary and sterile conditions shall be used for
45 drawing blood.

46 The person may have an independent chemical test or
47 tests administered at the person's own expense in
48 addition to any administered at the direction of a
49 peace officer. The failure or inability of the person
50 to obtain an independent chemical test or tests does

1 not preclude the admission of evidence of the results
2 of the test or tests administered at the direction of
3 the peace officer. Upon the request of the person who
4 is tested, the results of the test or tests
5 administered at the direction of the peace officer
6 shall be made available to the person.

7 Sec. 12. NEW SECTION. 321J.12 TEST RESULT
8 REVOCATION.

9 Upon certification, subject to penalty for perjury,
10 by the peace officer that there existed reasonable
11 grounds to believe that the person had been operating
12 a motor vehicle in violation of section 321J.2, that
13 there existed one or more of the necessary conditions
14 for chemical testing described in section 321J.6,
15 subsection 1, and that the person submitted to
16 chemical testing and the test results indicated an
17 alcohol concentration as defined in section 321J.1 of
18 .10 or more, the department shall revoke the person's
19 motor vehicle license or nonresident operating
20 privilege for a period of one hundred eighty days if
21 the person has had no revocation within the previous
22 six years under this chapter, and one year if the
23 person has had one or more previous revocations within
24 the previous six years under this chapter.

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

33 If the peace officer serves that immediate notice,
34 the peace officer shall take the person's Iowa license
35 or permit, if any, and issue a temporary license valid
36 only for twenty days. The peace officer shall
37 immediately send the person's driver's license to the
38 department along with the officer's certificate
39 indicating that the test results indicated an alcohol
40 concentration of .10 or more.

41 The results of a chemical test may not be used as
42 the basis for a revocation of a person's motor vehicle
43 license or nonresident operating privilege if the
44 alcohol concentration indicated by the chemical test
45 minus the established margin of error inherent in the
46 device or method used to conduct the chemical test
47 does not equal an alcohol concentration of .10 or
48 more.

49 Sec. 13. NEW SECTION. 321J.13 HEARING ON
50 REVOCATION --APPEAL.

1 1. Notice of revocation of a person's motor
2 vehicle license or operating privilege served pursuant
3 to section 321J.9 or 321J.12 shall include a form
4 accompanied by a preaddressed envelope on which the
5 person served may indicate by a checkmark if the
6 person wishes to request a temporary restricted
7 license only or if the person wishes a hearing to
8 contest the revocation. The form shall clearly state
9 on its face that the form must be completed and
10 returned within twenty days of receipt or the person's
11 right to a hearing to contest the revocation is
12 foreclosed. The form shall also be accompanied by a
13 statement of the operation of and the person's rights
14 under this chapter.

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

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

33 b. Whether a test was administered and the test
34 results indicated an alcohol concentration as defined
35 in section 321J.1 of .10 or more.

36 3. After the hearing the department shall order
37 that the revocation be either rescinded or sustained.
38 In the event that the revocation is sustained, the
39 administrative hearing officer who conducted the
40 hearing has authority to issue a temporary restricted
41 license to the person whose motor vehicle license or
42 operating privilege was revoked. Upon receipt of the
43 decision of the department to sustain a revocation,
44 the person contesting the revocation shall have ten
45 days to file a request for review of the decision by
46 the director. The director or the director's designee
47 shall review the decision within fifteen days and
48 shall either rescind or sustain the revocation or
49 order a new hearing. If the director orders a new
50 hearing, the department shall grant the person a new

1 hearing within thirty days of the director's order.
2 4. A person whose motor vehicle license or
3 operating privilege has been revoked under section
4 321J.9 or 321J.12 may reopen a department hearing on
5 the revocation if the person submits a petition
6 stating that new evidence has been discovered which
7 provides grounds for rescission of the revocation, or
8 if the person submits a petition stating that a
9 criminal action on a charge of a violation of section
10 321J.2 filed as a result of the same circumstances
11 which resulted in the revocation has resulted in a
12 decision in which the court has held that the peace
13 officer did not have reasonable grounds to believe
14 that a violation of section 321J.2 had occurred to
15 support a request for or to administer a chemical test
16 or which has held the chemical test to be otherwise
17 inadmissible or invalid. Such a decision by the court
18 is binding on the department.

19 5. The department shall stay the revocation of a
20 person's motor vehicle license or operating privilege
21 for the period that the person is contesting the
22 revocation under this section or section 321J.14 if it
23 is shown to the satisfaction of the department that
24 the new evidence is material and that there were valid
25 reasons for failure to present it in the contested
26 case proceeding before the department.

27 6. If the department fails to comply with the time
28 limitations of this section regarding granting a
29 hearing, review by the director or the director's
30 designee, or granting a new hearing, and if the
31 request for a hearing or review by the director was
32 properly made under this section, the revocation of
33 the motor vehicle license or operating privilege of
34 the person who made the request for a hearing or
35 review shall be rescinded. This subsection shall not
36 apply in those cases in which a continuance to the
37 hearing has been granted at the request of either the
38 person who requested the hearing or the peace officer
39 who requested or administered the chemical test.

40 Sec. 14. NEW SECTION. 321J.14 JUDICIAL REVIEW.
41 Judicial review of an action of the department may
42 be sought in accordance with the terms of the Iowa
43 administrative procedure Act, chapter 17A.
44 Notwithstanding the terms of that chapter, a petition
45 for judicial review may be filed in the district court
46 in the county where the alleged events occurred or in
47 the county in which the administrative hearing was
48 held.

49 Sec. 15. NEW SECTION. 321J.15 EVIDENCE IN ANY
50 ACTION.

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

14 Sec. 16. NEW SECTION. 321J.16 PROOF OF REFUSAL
15 ADMISSIBLE.

16 If a person refuses to submit to a chemical test,
17 proof of refusal is admissible in any civil or
18 criminal action or proceeding arising out of acts
19 alleged to have been committed while the person was
20 operating a motor vehicle in violation of section
21 321J.2.

22 Sec. 17. NEW SECTION. 321J.17 CIVIL PENALTY --
23 SEPARATE FUND -- REINSTATEMENT.

24 When the department revokes a person's motor
25 vehicle license or nonresident operating privilege
26 under this chapter, the department shall assess the
27 person a civil penalty of one hundred dollars. The
28 money collected by the department under this section
29 shall be transmitted to the treasurer of state who
30 shall deposit the money in a separate fund dedicated
31 to and used for the purposes of chapter 912, and for
32 the operation of a missing person clearinghouse and
33 domestic abuse registry by the department of public
34 safety. A temporary restricted license shall not be
35 issued or a motor vehicle license or nonresident
36 operating privilege reinstated until the civil penalty
37 has been paid.

38 Sec. 18. NEW SECTION. 321J.18 OTHER EVIDENCE.

39 This chapter does not limit the introduction of any
40 competent evidence bearing on the question of whether
41 a person was under the influence of an alcoholic
42 beverage or a drug, including the results of chemical
43 tests of specimens of blood, breath or urine obtained
44 more than two hours after the person was operating a
45 motor vehicle.

46 Sec. 19. NEW SECTION. 321J.19 INFORMATION
47 RELAYED TO OTHER STATES.

48 When it has been finally determined under this
49 chapter that a nonresident's privilege to operate a
50 motor vehicle in this state has been revoked or

1 denied, the department shall give information in
2 writing of the action taken to the official in charge
3 of traffic control or public safety of the state of
4 the person's residence and of any state in which the
5 person has a license.

6 Sec. 20. NEW SECTION. 321J.20 TEMPORARY
7 RESTRICTED LICENSE.

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

26 a. The person's motor vehicle license is revoked
27 under section 321J.4, subsection 1, 2, 4, or 6.

28 b. The person's motor vehicle license is revoked
29 under section 321J.9 and the person has entered a plea
30 of guilty on a charge of a violation of section 321J.2
31 which arose from the same set of circumstances which
32 resulted in the person's motor vehicle license
33 revocation under section 321J.9 and the guilty plea is
34 not withdrawn at the time of or after application for
35 the temporary restricted license.

36 c. The person's motor vehicle license is revoked
37 under section 321J.12.

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

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

48 3. A person holding a temporary restricted license
49 issued by the department under this section shall not
50 operate a motor vehicle for pleasure.

1 Sec. 21. NEW SECTION. 321J.21 DRIVING WHILE
2 LICENSE DENIED OR REVOKED.

3 A person whose motor vehicle license or nonresident
4 operating privilege has been denied or revoked as
5 provided in this chapter and who drives a motor
6 vehicle upon the highways of this state while the
7 license or privilege is denied or revoked commits a
8 serious misdemeanor. The department, upon receiving
9 the record of the conviction of a person under this
10 section upon a charge of driving a motor vehicle while
11 the license of the person was revoked or denied, shall
12 extend the period of revocation or denial for an
13 additional like period, and the department shall not
14 issue a new license during the additional period.

15 Sec. 22. NEW SECTION. 321J.22 COURT-ORDERED
16 DRINKING DRIVERS COURSE.

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

19 a. "Course for drinking drivers" means an approved
20 course designed to inform the offender about drinking
21 and driving and encourage the offender to assess the
22 offender's own drinking and driving behavior in order
23 to select practical alternatives.

24 b. "Satisfactory completion of a course" means
25 receiving at the completion of a course a grade from
26 the course instructor of "C" or "2.0," or better.

27 2. After a conviction for, or a plea of guilty of,
28 a violation of section 321J.2, the court in addition
29 to its power to commit the defendant for treatment of
30 alcoholism under section 321J.3, may order the
31 defendant, at the defendant's own expense, to enroll
32 in, attend, and successfully complete a course for
33 drinking drivers. The court may alternatively or
34 additionally require the defendant to seek evaluation,
35 treatment or rehabilitation services under section
36 125.33 at the defendant's expense and to furnish
37 evidence of successful completion. A copy of the
38 order shall be forwarded to the department.

39 3. The course provided in this section shall be
40 offered on a regular basis at each area school as
41 defined in section 280A.2. Enrollment in the courses
42 is not limited to persons ordered to enroll, attend
43 and successfully complete the course under subsection
44 2, and any person convicted of a violation of section
45 321J.2 who was not ordered to enroll in a course may
46 enroll in and attend a course for drinking drivers.
47 The course required by this section shall be taught by
48 the area schools under the department of public
49 instruction and approved by the department. The
50 department of public instruction shall establish

1 reasonable fees to defray the expense of obtaining
2 classroom space, instructor salaries, and class
3 materials. A person shall not be denied enrollment in
4 a course by reason of the person's indigency.

5 4. An employer shall not discharge a person from
6 employment solely for the reason of work absence to
7 attend a course required by this section. Any
8 employer who violates this section is liable for
9 damages which include but are not limited to actual
10 damages, court costs, and reasonable attorney fees.
11 The person may also petition the court for imposition
12 of a cease and desist order against the person's
13 employer and for reinstatement to the person's
14 previous position of employment.

15 5. The department of public instruction shall
16 prepare a list of the locations of the courses taught
17 under this section, the dates and times taught, the
18 procedure for enrollment, and the schedule of course
19 fees. The list shall be kept current and a copy of
20 the list shall be sent to each court having
21 jurisdiction over offenses provided in this chapter.

22 6. The department of public instruction shall
23 maintain enrollment, attendance, successful and
24 nonsuccessful completion data on the persons ordered
25 to enroll, attend and successfully complete a course
26 for drinking drivers. This data shall be forwarded to
27 the court.

28 **Sec. 23. NEW SECTION. ROADBLOCKS CONDUCTED BY LAW**
29 **ENFORCEMENT AGENCIES.**

30 1. The law enforcement agencies of this state may
31 conduct emergency vehicle roadblocks in response to
32 immediate threats to the health, safety, and welfare
33 of the public; and otherwise may conduct routine
34 vehicle roadblocks only as provided in this section.
35 Routine vehicle roadblocks may be conducted to enforce
36 compliance with the law regarding any of the
37 following:

- 38 a. The licensing of operators of motor vehicles.
- 39 b. The registration of motor vehicles.
- 40 c. The safety equipment required on motor
41 vehicles.
- 42 d. The provisions of chapters 109 and 110.

43 2. Any routine vehicle roadblock conducted under
44 this section shall meet the following requirements:

45 a. The location of the roadblock, the time during
46 which the roadblock will be conducted, and the
47 procedure to be used while conducting the roadblock,
48 shall be determined by policymaking administrative
49 officers of the law enforcement agency.

50 b. The roadblock location shall be selected for

1 its safety and visibility to oncoming motorists, and
2 adequate advance warning signs, illuminated at night
3 or under conditions of poor visibility, shall be
4 erected to provide timely information to approaching
5 motorists of the roadblock and its nature.

6 c. There shall be uniformed officers and marked
7 official vehicles of the law enforcement agency or
8 agencies involved, in sufficient quantity and
9 visibility to demonstrate the official nature of the
10 roadblock.

11 d. The selection of motor vehicles to be stopped
12 shall not be arbitrary.

13 e. The roadblock shall be conducted to assure the
14 safety of and to minimize the inconvenience of the
15 motorists involved.

16 Sec. 24. NEW SECTION. 123.151 POSTING NOTICE ON
17 DRUNK DRIVING LAWS REQUIRED.

18 State liquor stores and holders of liquor control
19 licenses, wine permits, or beer permits shall post in
20 a prominent place in the state liquor stores or
21 licensed premises notice explaining the operation of
22 and penalties of the laws which prohibit the operation
23 of a motor vehicle by a person who is intoxicated.
24 The size, print size, location, and content of the
25 notice shall be established by rule of the department.

26 Sec. 25. Section 125.44, unnumbered paragraph 6,
27 Code 1985, is amended to read as follows:

28 The department is liable for the cost of care,
29 treatment, and maintenance of a substance abuser
30 admitted to the facility voluntarily or pursuant to
31 section 125.75, 125.81, or 125.91 or section ~~321-2817~~,
32 ~~321-2837~~--subsection-37, 321J.3 or 204.409, subsection 2
33 only to those facilities that have a contract with the
34 department under this section, only for the amount
35 computed according to and within the limits of
36 liability prescribed by this section, and only when
37 the substance abuser is unable to pay the costs and
38 there is no other person, firm, corporation or
39 insurance company bound to pay the costs.

40 Sec. 26. NEW SECTION. 217A.30 ASSIGNMENT TO
41 TREATMENT FACILITIES.

42 1. The director of the department of corrections
43 may assign an offender committed to the custody of the
44 director for a felony violation of chapter 321J to a
45 facility which meets all of the following
46 requirements:

47 a. Is a treatment facility meeting the licensure
48 standards of the division of substance abuse of the
49 department of public health.

50 b. Is a facility meeting applicable standards of

the American corrections association.

3 c. Is a facility which meets any other rule or
4 requirement adopted by the department pursuant to
5 chapter 17A.

6 2. The assignment of an offender pursuant to
7 subsection 1 shall be for purposes of substance abuse
8 treatment and education, and may include work programs
9 for the offender at times when the offender is not in
10 substance abuse treatment or education.

11 3. Offenders assigned to a facility pursuant to
12 this section shall not be included in calculations
13 used to determine the existence of a prison
14 overcrowding state of emergency.

15 4. The director shall prepare program
16 guidelines and rules for the construction of the
17 administrative rules review committee. The committee
18 shall be composed of representatives of the department,
19 the legislature, insurance reimbursement and health
20 officials, or other forms of funding, and shall
21 establish criteria for the evaluation of facilities
22 and offenders for participation in the program. On
23 all other issues the director shall determine the
24 proposed rules prepared pursuant to this section
25 shall be submitted to the administrative rule
26 committee on or before December 15, 1991.

27 5. Section 321.97, subsection 1, shall be
28 amended to read as follows:

29 3. Administer the provisions of chapters 121,
30 321E, 321F, and 321J relating to motor
31 vehicle financial responsibility, the liability of
32 the operator of a motor vehicle, and the
33 liability of the owner of a motor vehicle.

34 321.97. Section 321.97, subsection 1, shall be
35 amended to read as follows:
36 1. Approved driver education course shall consist
37 of the department of public instruction shall consist
38 of at least thirty clock hours of classroom
39 instruction, and six or more clock hours of
40 instruction of which at least three shall
41 consist of street or highway driving. The approved
42 course shall include a minimum of two hours of
43 classroom instruction concerning substance abuse as
44 part of its curriculum. After the student has
45 completed three clock hours of street or highway
46 driving and has demonstrated to the instructor an
47 ability to properly operate a motor vehicle and upon
48 written request of a parent or guardian, the
49 instructor may waive the remaining required laboratory

50 Sec. 29. Section 321.191, unnumbered paragraph 2,

1 Code 1985, is amended to read as follows:

2 There shall be a fee of twenty dollars for
3 reinstatement of a chauffeur's license or operator's
4 license which is, after notice and opportunity for
5 hearing, suspended or revoked pursuant to sections
6 321.193, 321.209 and 321.210, except subsection 4
7 thereof, 321.513, 321.560, 321A.6, and chapter ~~321B~~
8 321J. The twenty-dollar fee shall be collected only
9 if the person whose license was suspended or revoked
10 was served personally with notice. If the person
11 whose license was suspended or revoked was served
12 notice by certified mail, the reinstatement fee shall
13 be ten dollars.

14 Sec. 30. Section 321.196, Code Supplement 1985, is
15 amended by adding the following new unnumbered
16 paragraph:

17 NEW UNNUMBERED PARAGRAPH. Prior to the renewal of
18 a license pursuant to this section, the department
19 shall issue to each applicant information on the law
20 relating to the operation of a motor vehicle while
21 intoxicated and statistical information relating to
22 the number of injuries and fatalities occurring as a
23 result of the operation of motor vehicles while
24 intoxicated.

25 Sec. 31. Section 321.209, subsection 2, Code 1985,
26 is amended by striking the subsection.

27 Sec. 32. Section 321.210, Code 1985, is amended by
28 adding the following new unnumbered paragraph:

29 NEW UNNUMBERED PARAGRAPH. The department shall not
30 consider or assess any points for speeding violations
31 of ten miles per hour or less over the legal speed
32 limit in speed zones that have a legal speed limit
33 greater than thirty-five miles per hour in determining
34 a license suspension under this section. This
35 paragraph shall apply to only the first two such
36 violations which occur within any twelve-month period.

37 Sec. 33. Section 321.213, Code 1985, is amended to
38 read as follows:

39 321.213 LICENSE SUSPENSIONS OR REVOCATIONS DUE TO
40 VIOLATIONS BY JUVENILE DRIVERS.

41 Upon the entering of an order at the conclusion of
42 an adjudicatory hearing under section 232.47 that the
43 child violated a provision of this chapter or chapter
44 321A or chapter 321J for which the penalty is greater
45 than a simple misdemeanor, ~~or that the child refused~~
46 ~~to submit to chemical testing under section 321B-47~~
47 the clerk of the juvenile court in the adjudicatory
48 hearing shall forward a copy of the adjudication to
49 the department. Notwithstanding section 232.55, a
50 final adjudication in a juvenile court that the child

violated a provision of this chapter or chapter 321A
or chapter 321J constitutes a final conviction of a
3 violation of a provision of this chapter or chapter
4 321A or chapter 321J for purposes of section 321.189,
5 subsection 2, paragraph "b", and sections 321.193,
6 321.194, 321.200, 321.209, 321.210, 321.215, and
7 321A.17. ~~Notwithstanding section 232-557, the director~~
8 ~~shall revoke the license or permit of a child under~~
9 ~~section 321B-13 upon receipt of a copy of the final~~
10 ~~adjudication in a juvenile court that the child~~
11 ~~refused to submit to chemical testing under section~~
12 ~~321B-4.~~

13 Sec. 34. Section 321.218, unnumbered paragraph 1,
14 Code Supplement 1985, is amended to read as follows:

15 A person whose operator's or chauffeur's license or
16 driving privilege has been denied, canceled, suspended
17 or revoked as provided in this chapter, and who drives
18 a motor vehicle upon the highways of this state while
19 the license or privilege is denied, canceled,
20 suspended, or revoked commits a simple misdemeanor.
21 However, a person whose license or driving privilege
22 has been revoked under section 321.209 ~~or chapter 321B~~
23 ~~and~~ who drives a motor vehicle upon the highways of
24 this state while the license or privilege is revoked
25 commits a serious misdemeanor. The sentence imposed
26 under this section shall not be suspended by the
27 court, notwithstanding section 907.3 or any other
28 statute. The department, upon receiving the record of
29 the conviction of a person under this section upon a
30 charge of driving a motor vehicle while the license of
31 the person was suspended or revoked, shall, except for
32 licenses suspended under section 321.513, extend the
33 period of suspension or revocation for an additional
34 like period, and the department shall not issue a new
35 license during the additional period.

36 Sec. 35. Section 321.228, subsection 2, Code 1985,
37 is amended to read as follows:

38 2. The provisions of sections 321.261 to 321.274
39 ~~section and sections~~ 321.277 and ~~sections~~ 321.280 to
40 ~~321-282~~ shall apply upon highways and elsewhere
41 throughout the state.

42 Sec. 36. Section 321.233, unnumbered paragraph 1,
43 Code Supplement 1985, is amended to read as follows:

44 This chapter, except ~~section~~ sections 321.277 and
45 ~~sections~~ 321.280 ~~to 321-282~~ does not apply to persons
46 and motor vehicles and other equipment while actually
47 engaged in work upon the surface of a highway
48 officially closed to traffic but does apply to such
49 persons and vehicles when traveling to or from such
50 work. The minimum speed restriction of section

1 321.285, subsection 8, and the provisions of sections
2 321.297 and 321.298 do not apply to road workers
3 operating maintenance equipment owned by or under
4 lease to any state or local authority while engaged in
5 road maintenance, road blading, snow and ice control
6 and removal, and granular resurfacing work on a
7 highway, whether or not the highway is closed to
8 traffic.

9 Sec. 37. Section 321.555, subsection 1, paragraph
10 b, Code 1985, is amended to read as follows:

11 b. Operating a motor vehicle in violation of
12 section ~~321-281~~ 321J.2.

13 Sec. 38. Section 321A.17, subsection 1, Code 1985,
14 is amended to read as follows:

15 1. Whenever the director, under any law of this
16 state, suspends or revokes the license of any person
17 upon receiving record of a conviction or a forfeiture
18 of bail or revokes the license of any person pursuant
19 to chapter ~~321B~~ 321J, the director shall also suspend
20 the registration for all motor vehicles registered in
21 the name of the person, except that the director shall
22 not suspend the registration, unless otherwise
23 required by law, if the person has previously given or
24 immediately gives and thereafter maintains proof of
25 financial responsibility with respect to all motor
26 vehicles registered by the person.

27 Sec. 39. Section 331.653, subsection 33, Code
28 Supplement 1985, is amended to read as follows:

29 33. Carry out duties relating to the enforcement
30 of laws prohibiting the operation of a motor vehicle
31 while under the influence of an alcoholic beverage as
32 provided in chapter ~~321B~~ 321J.

33 Sec. 40. Section 602.8102, subsection 51, Code
34 Supplement 1985, is amended to read as follows:

35 51. Forward to the department of transportation a
36 copy of the record of each conviction or forfeiture of
37 bail of a person charged with the violation of the
38 laws regulating the operation of vehicles on public
39 roads as provided in sections ~~321-281~~ 321J.2 and
40 321.491.

41 Sec. 41. NEW SECTION. 707.6A HOMICIDE BY
42 VEHICLE.

43 1. A person commits a class "D" felony when the
44 person unintentionally causes the death of another by
45 either of the following means:

46 a. Operating a motor vehicle while under the
47 influence of alcohol or a drug or a combination of
48 such substances or while having an alcohol
49 concentration of .10 or more, in violation of section
50 321J.2.

1 b. Driving a motor vehicle in a reckless manner
2 with willful or wanton disregard for the safety of
3 persons or property, in violation of section 321.277.

4 2. A person commits an aggravated misdemeanor when
5 the person unintentionally causes the death of another
6 by operating a motor vehicle in any of the following
7 manners:

8 a. Drag racing, in violation of section 321.278.

9 b. Eluding or attempting to elude a pursuing law
10 enforcement vehicle, in violation of section 321.279.

11 3. As used in this section, "motor vehicle"
12 includes any vehicle defined as a motor vehicle in
13 section 321.1.

14 Sec. 42. Section 804.31, unnumbered paragraph 2,
15 Code Supplement 1985, is amended to read as follows:

16 This section does not prohibit the request for and
17 administration of a preliminary breath screening test
18 or the request for and administration of a chemical
19 test of a body substance or substances under chapter
20 ~~321B~~ 321J prior to the arrival of a qualified
21 interpreter for a hearing impaired person who is
22 believed to have committed a violation of section
23 ~~321-201~~ 321J.2. However, upon the arrival of the
24 interpreter the officer who requested the chemical
25 test shall explain through the interpreter the reason
26 for the testing, the consequences of the person's
27 consent or refusal, and the ramifications of the
28 results of the test, if one was administered.

29 Sec. 43. Section 902.3, Code 1985, is amended to
30 read as follows:

31 902.3 INDETERMINATE SENTENCE.

32 When a judgment of conviction of a felony, other
33 than a class "A" felony is entered against a person,
34 the court, in imposing a sentence of confinement,
35 shall commit the person into the custody of the
36 director of the Iowa department of corrections for an
37 indeterminate term, the maximum length of which shall
38 not exceed the limits as fixed by section 707.3 or
39 section 902.9 nor shall the term be less than the
40 minimum term imposed by law, if a minimum sentence is
41 provided. However, the court may sentence a person
42 convicted of a class "D" felony for a violation of
43 section 321J.2 to imprisonment for up to one year in a
44 county jail under section 902.9, subsection 4, and the
45 person shall not be under the custody of the director
46 of the Iowa department of corrections.

47 Sec. 44. Section 902.9, subsection 4, Code 1985,
48 is amended to read as follows:

49 4. A class "D" felon, not an habitual offender,
50 shall be confined for no more than five years, and in

1 addition may be sentenced to a fine of not more than
2 seven thousand five hundred dollars. A class "D"
3 felon, such felony being for a violation of section
4 321J.2, may be sentenced to imprisonment for up to one
5 year in the county jail.

6 Sec. 45. Section 907.3, subsection 1, paragraph 9,
7 Code 1985, is amended to read as follows:

8 g. The offense is a violation of section ~~321-281~~
9 321J.2 and, within the previous six years, the person
10 has been convicted of a violation of that section or
11 the person's driver's license has been revoked
12 pursuant to ~~that section or chapter 321B~~ section
13 321J.4, 321J.9, or 321J.12.

14 Sec. 46. Section 912.1, subsection 4, Code 1985,
15 is amended to read as follows:

16 4. "Crime" means conduct that occurs or is
17 attempted in this state, poses a substantial threat of
18 personal injury or death, and is punishable as a
19 felony, an aggravated misdemeanor, or a serious
20 misdemeanor, or would be so punishable but for the
21 fact that the person engaging in the conduct lacked
22 the capacity to commit the crime under the laws of
23 this state. "Crime" does not include conduct arising
24 out of the ownership, maintenance, or use of a motor
25 vehicle, motorcycle, motorized bicycle, train, boat,
26 or aircraft except for violations of section ~~321-281~~
27 321J.2 or when the intention is to cause personal
28 injury or death. A plea or verdict of guilty of a
29 charge under section ~~321-281~~ 321J.2 or a license
30 revocation under section ~~321B-13~~ 321J.9 or ~~321B-16~~
31 321J.12 shall be considered by the department as
32 evidence of a violation of section ~~321-281~~ 321J.2 for
33 the purposes of this chapter.

34 Sec. 47. Section 321.281, Code Supplement 1985, is
35 repealed.

36 Sec. 48. Section 321.282, Code 1985, is repealed.

37 Sec. 49. Section 321.283, Code Supplement 1985, is
38 repealed.

39 Sec. 50. Chapter 321B, Code 1985 and Code
40 Supplement 1985, is repealed.

41 Sec. 51. References in chapter 321J to actions
42 which occurred previously under "this chapter" or
43 "this section" include the preceding Code chapter or
44 section which covers the same or substantially similar
45 actions.

46 Sec. 52. This Act applies to any judicial or
47 administrative action which arises due to violation of
48 a section of this Act or an implementing rule, and
49 which occurs after the effective date of this Act.
50 This Act also applies to any judicial or

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1 administrative action which arose prior to the
2 effective date of this Act due to a violation of a
3 preceding Code section or implementing rule which was
4 the same or substantially similar to a section in this
5 Act, or an implementing rule if the defendant or
6 defendant's counsel requests that the action proceed
7 under this Act."

8
9 S-5969 Filed May 2, 1986
10 BY COMM. ON JUDICIARY, DOYLE, CHAIR *ADOPTED*

11 *Adopted 5/2 (p 1517)*

12
13

14
15 HOUSE FILE 2493

16
17 S-5963

18
19 1 Amend House File 2493 as amended, passed, and re-
20 2 printed by the House as follows:
21 3 1. Page 25, by striking lines 5 through 13.

22 S-5963 Filed May 2, 1986 *OUT OF ORDER*
23 BY LIND

24 *Please see 5/2 (p 1547)*

25
26

27 HOUSE FILE 2493

28 S-5973

29
30 1 Amend amendment S-5969 to House File 2493 as amended,
31 2 passed and reprinted by the House as follows:
32 3 1. Page 20, by striking lines 16 through 25.

33 S-5973 Filed May 2, 1986 *w/drawn*
34 BY LIND

35 *w/d 5/2 (p 1597)*

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SENATE AMENDMENT TO HOUSE FILE 2493

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1 Amend House File 2493 as amended, passed and
2 reprinted by the House as follows:

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

5 "Section 1. NEW SECTION. 321J.1 DEFINITIONS.

6 As used in this chapter unless the context
7 otherwise requires:

8 1. "Alcohol concentration" means the number of
9 grams of alcohol per any of the following:

10 a. One hundred milliliters of blood.

11 b. Two hundred ten liters of breath.

12 c. Sixty-seven milliliters of urine.

13 2. "Alcoholic beverage" includes alcohol, wine,
14 spirits, beer, or any other beverage which contains
15 ethyl alcohol and is fit for human consumption.

16 3. "Arrest" includes but is not limited to taking
17 into custody pursuant to section 232.19.

18 4. "Department" means the state department of
19 transportation.

20 5. "Director" means the director of transportation
21 or the director's designee.

22 6. "Motor vehicle license" means any license or
23 permit issued to a person to operate a motor vehicle
24 in this state, including but not limited to an
25 operator, chauffeur, or motorized bicycle license and
26 an instruction or temporary permit.

27 7. "Peace officer" means:

28 a. A member of the highway patrol.

29 b. A police officer under civil service as
30 provided in chapter 400.

31 c. A sheriff.

32 d. A regular deputy sheriff who has had formal
33 police training.

34 e. Any other law enforcement officer who has
35 satisfactorily completed an approved course relating
36 to motor vehicle operators under the influence of
37 alcoholic beverages at the Iowa law enforcement
38 academy or a law enforcement training program approved
39 by the department of public safety.

40 8. "Serious injury" means a bodily injury which
41 creates a substantial risk of death, or which causes
42 serious permanent disfigurement, or which causes
43 protracted loss or impairment of the function of any
44 bodily organ or major bodily member, or which causes
45 the loss of any bodily member.

46 Sec. 2. NEW SECTION. 321J.2 OPERATING WHILE
47 UNDER THE INFLUENCE OF ALCOHOL OR A DRUG OR WHILE
48 HAVING AN ALCOHOL CONCENTRATION OF .10 OR MORE. (OWI)

49 1. A person commits the offense of operating while
50 intoxicated if the person operates a motor vehicle in

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1 this state in either of the following conditions:

2 a. While under the influence of an alcoholic
3 beverage or other drug or a combination of such
4 substances.

5 b. While having an alcohol concentration as
6 defined in section 321J.1 of .10 or more.

7 2. A person who violates this section commits:

8 a. A serious misdemeanor for the first offense and
9 shall be imprisoned in the county jail for not less
10 than forty-eight hours to be served as ordered by the
11 court, less credit for any time the person was
12 confined in a jail or detention facility following
13 arrest, and assessed a fine of not less than five
14 hundred dollars nor more than one thousand dollars.
15 As an alternative to a portion or all of the fine, the
16 court may order the person to perform not more than
17 two hundred hours of unpaid community service. The
18 court may accommodate the sentence to the work
19 schedule of the defendant.

20 b. An aggravated misdemeanor for a second offense
21 and shall be imprisoned in the county jail or
22 community-based correctional facility not less than
23 seven days, which minimum term cannot be suspended
24 notwithstanding section 901.5, subsection 3 and
25 section 907.3, subsection 2, and assessed a fine of
26 not less than seven hundred fifty dollars.

27 c. A class "D" felony for a third offense and each
28 subsequent offense and shall be imprisoned in the
29 county jail or community-based correctional facility
30 for not less than thirty days, which minimum term
31 cannot be suspended notwithstanding section 901.5,
32 subsection 3, and section 907.3, subsection 2, and
33 assessed a fine of not less than seven hundred fifty
34 dollars.

35 3. No conviction for, deferred judgment for, or
36 plea of guilty to, a violation of this section which
37 occurred more than six years prior to the date of the
38 violation charged shall be considered in determining
39 that the violation charged is a second, third, or
40 subsequent offense. For the purpose of determining if
41 a violation charged is a second, third, or subsequent
42 offense, deferred judgments pursuant to section 907.3
43 for violations of this section and convictions or the
44 equivalent of deferred judgments for violations in any
45 other states under statutes substantially
46 corresponding to this section shall be counted as
47 previous offenses. The courts shall judicially notice
48 the statutes of other states which define offenses
49 substantially equivalent to the one defined in this
50 section and can therefore be considered corresponding

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1 statutes. Each previous violation shall be considered
2 a separate previous offense without regard to whether
3 each was complete as to commission and conviction or
4 deferral of judgment following or prior to any other
5 previous violation.

6 4. A person shall not be convicted and sentenced
7 for more than one violation of this section if the
8 violation is shown to have been committed by either or
9 both of the means described in subsection 1 in the
10 same occurrence.

11 5. The clerk of court shall immediately certify to
12 the department a true copy of each order entered with
13 respect to deferral of judgment, deferral of sentence
14 or pronouncement of judgment and sentence for a
15 defendant under this section.

16 6. This section does not apply to a person
17 operating a motor vehicle while under the influence of
18 a drug if the substance was prescribed for the person
19 and was taken under the prescription and in accordance
20 with the directions of a medical practitioner as
21 defined in section 155.3, subsection 11, if there is
22 no evidence of the consumption of alcohol and the
23 medical practitioner had not directed the person to
24 refrain from operating a motor vehicle.

25 7. In any prosecution under this section, evidence
26 of the results of analysis of a specimen of the
27 defendant's blood, breath, or urine is admissible upon
28 proof of a proper foundation. The alcohol
29 concentration established by the results of an
30 analysis of a specimen of the defendant's blood,
31 breath, or urine withdrawn within two hours after the
32 defendant was driving or in physical control of a
33 motor vehicle is presumed to be the alcohol
34 concentration at the time of driving or being in
35 physical control of the motor vehicle.

36 8. The court shall order a defendant convicted of
37 or receiving a deferred judgment for a violation of
38 this section to make restitution, in an amount not to
39 exceed two thousand dollars, for damages resulting
40 directly from the violation. An amount paid pursuant
41 to this restitution order shall be credited toward any
42 adverse judgment in a subsequent civil proceeding
43 arising from the same occurrence. However, other than
44 establishing a credit, a restitution proceeding
45 pursuant to this section shall not be given
46 evidentiary or preclusive effect in a subsequent civil
47 proceeding arising from the same occurrence.

48 9. In any prosecution under this section, the
49 results of a chemical test may not be used to prove a
50 violation of paragraph "b" of subsection 1 if the

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1 alcohol concentration indicated by the chemical test
2 minus the established margin of error inherent in the
3 device or method used to conduct the chemical test
4 does not equal an alcohol concentration of .10 or
5 more.

6 Sec. 3. NEW SECTION. 321J.3 COURT ORDERED
7 SUBSTANCE ABUSE EVALUATION OR TREATMENT.

8 1. On a conviction for a violation of section
9 321J.2, the court may order the defendant to attend a
10 course for drinking drivers under section 321J.22. If
11 the defendant submitted to a chemical test on arrest
12 for the violation of section 321J.2 and the test
13 indicated an alcohol concentration of .20 or higher,
14 the court shall order the defendant, on conviction, to
15 undergo a substance abuse evaluation and the court may
16 order the defendant to follow the recommendations
17 proposed in the substance abuse evaluation for
18 appropriate substance abuse treatment for the
19 defendant. Court ordered substance abuse treatment is
20 subject to the periodic reporting requirements of
21 section 125.86. If a defendant is committed by the
22 court to a substance abuse treatment facility, the
23 administrator of the facility shall report to the
24 court when it is determined that the defendant has
25 received the maximum benefit of treatment at the
26 facility and the defendant shall be released from the
27 facility. The time for which the defendant is
28 committed for treatment shall be credited against the
29 defendant's sentence. The court may prescribe the
30 length of time for the evaluation and treatment or it
31 may request that the area school conducting the course
32 for drinking drivers which the person is ordered to
33 attend or the treatment program to which the person is
34 committed immediately report to the court when the
35 person has received maximum benefit from the course
36 for drinking drivers or treatment program or has
37 recovered from the person's addiction, dependency, or
38 tendency to chronically abuse alcohol or drugs. A
39 person committed under this section who does not
40 possess sufficient income or estate to make payment of
41 the costs of the treatment in whole or in part shall
42 be considered a state patient and the costs of
43 treatment shall be paid as provided in section 125.44.
44 A defendant who fails to carry out the order of the
45 court or who fails to successfully complete or attend
46 a course for drinking drivers or an ordered substance
47 abuse treatment program shall be confined in the
48 county jail for twenty days in addition to any other
49 imprisonment ordered by the court or may be ordered to
50 perform unpaid community service work, and shall be

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1 placed on probation for one year with a violation of
2 this probation punishable as contempt of court.

3 2. As a condition of a suspended sentence or
4 portion of sentence for a second, third, or subsequent
5 offense in violation of section 321J.2, the court upon
6 hearing may commit the defendant for inpatient
7 treatment of alcoholism or drug addiction or
8 dependency to any hospital, institution, or community
9 correctional facility in Iowa providing such
10 treatment. The time for which the defendant is
11 committed for treatment shall be credited against the
12 defendant's sentence. The court may prescribe the
13 length of time for the evaluation and treatment or it
14 may request that the hospital to which the person is
15 committed immediately report to the court when the
16 person has received maximum benefit from the program
17 of the hospital or institution or has recovered from
18 the person's addiction, dependency, or tendency to
19 chronically abuse alcohol or drugs. A person
20 committed under this section who does not possess
21 sufficient income or estate to make payment of the
22 costs of the treatment in whole or in part shall be
23 considered a state patient and the costs of treatment
24 shall be paid as provided in section 125.44.

25 Sec. 4. NEW SECTION. 321J.4 REVOCATION OF MOTOR
26 VEHICLE LICENSE ON CONVICTION OR COURT ORDER.

27 1. If a defendant is convicted of a violation of
28 section 321J.2 and the defendant's motor vehicle
29 license or nonresident operating privilege has not
30 been revoked under section 321J.9 or 321J.12 for the
31 occurrence from which the arrest arose, the department
32 shall revoke the defendant's motor vehicle license or
33 nonresident operating privilege for one hundred eighty
34 days if the defendant has had no previous conviction
35 under section 321J.2 or revocation under section
36 321J.9 or 321J.12 within the previous six years and
37 for one year if the defendant has had one or more
38 previous convictions or revocations under those
39 sections within the previous six years.

40 2. If the court defers judgment pursuant to
41 section 907.3 for a violation of section 321J.2, the
42 court shall order the department to revoke the
43 defendant's motor vehicle license or nonresident
44 operating privilege for a period of not less than
45 thirty days nor more than ninety days if the
46 defendant's motor vehicle license or nonresident
47 operating privilege has not been revoked under section
48 321J.9 or 321J.12 for the occurrence from which the
49 arrest arose. The court shall immediately require the
50 defendant to surrender to it all Iowa licenses or

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1 permits held by the defendant, which the court shall
2 forward to the department with a copy of the order
3 deferring judgment.

4 3. a. Upon a plea or verdict of guilty of a third
5 or subsequent violation of section 321J.2, the court
6 shall order the department to revoke the defendant's
7 motor vehicle license or nonresident operating
8 privilege for a period of six years. The court shall
9 require the defendant to surrender to it all Iowa
10 licenses or permits held by the defendant, which the
11 court shall forward to the department with a copy of
12 the order for revocation.

13 b. After two years from the date of the order for
14 revocation, the defendant may apply to the court for
15 restoration of the defendant's eligibility for a motor
16 vehicle license. The application may be granted only
17 if all of the following are shown by the defendant by
18 a preponderance of the evidence:

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

24 (2) The defendant has not been convicted, since
25 the date of the revocation order, of any subsequent
26 violations of section 321J.2 or 123.46, or any
27 comparable city or county ordinance, and the defendant
28 has not, since the date of the revocation order,
29 submitted to a chemical test under this chapter that
30 indicated an alcohol concentration as defined in
31 section 321J.1 of .10 or more, or refused to submit to
32 chemical testing under this chapter.

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

38 (4) The defendant's motor vehicle license is not
39 currently subject to suspension or revocation for any
40 other reason.

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

45 4. Upon a plea or verdict of guilty of a violation
46 of section 321J.2 which involved a personal injury,
47 the court shall determine in open court, from
48 consideration of the information in the file and any
49 other evidence the parties may submit, whether a
50 serious injury was sustained by any person other than

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1 the defendant and, if so, whether the defendant's
2 conduct in violation of section 321J.2 caused the
3 serious injury. If the court so determines, the court
4 shall order the department to revoke the defendant's
5 motor vehicle license or nonresident operating
6 privilege for a period of one year in addition to any
7 other period of suspension or revocation. The
8 defendant shall surrender to the court any Iowa
9 license or permit and the court shall forward it to
10 the department with a copy of the order for
11 revocation.

12 5. Upon a plea or verdict of guilty of a violation
13 of section 321J.2 which involved a death, the court
14 shall determine in open court, from consideration of
15 the information in the file and any other evidence the
16 parties may submit, whether a death occurred and, if
17 so, whether the defendant's conduct in violation of
18 section 321J.2 caused the death. If the court so
19 determines, the court shall order the department to
20 revoke the defendant's motor vehicle license or
21 nonresident operating privilege for a period of six
22 years. The defendant shall surrender to the court any
23 Iowa license or permit and the court shall forward it
24 to the department with a copy of the order for
25 revocation.

26 6. If a license or permit to operate a motor
27 vehicle is revoked or denied under this section or
28 section 321J.9 or 321J.12, the period of revocation or
29 denial shall be the period provided for such a
30 revocation or until the defendant reaches the age of
31 eighteen whichever period is longer.

32 Sec. 5. NEW SECTION. 321J.5 PRELIMINARY
33 SCREENING TEST.

34 When a peace officer has reasonable grounds to
35 believe that a motor vehicle operator may be violating
36 or has violated section 321J.2, or the operator has
37 been involved in a motor vehicle collision resulting
38 in injury or death, the peace officer may request the
39 operator to provide a sample of the operator's breath
40 for a preliminary screening test using a device
41 approved by the commissioner of public safety for that
42 purpose. The results of this preliminary screening
43 test may be used for the purpose of deciding whether
44 an arrest should be made and whether to request a
45 chemical test authorized in this chapter, but shall
46 not be used in any court action except to prove that a
47 chemical test was properly requested of a person
48 pursuant to this chapter.

49 Sec. 6. NEW SECTION. 321J.6 IMPLIED CONSENT TO
50 TEST.

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

16 a. A peace officer has lawfully placed the person
17 under arrest for violation of section 321J.2.

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

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

23 d. The preliminary breath screening test was
24 administered and it indicated an alcohol concentration
25 as defined in section 321J.1 of .10 or more.

26 e. The preliminary breath screening test was
27 administered and it indicated an alcohol concentration
28 of less than .10 and the peace officer has reasonable
29 grounds to believe that the person was under the
30 influence of a drug other than alcohol or a
31 combination of alcohol and another drug.

32 2. The peace officer shall determine which of the
33 three substances, breath, blood, or urine, shall be
34 tested. Refusal to submit to a chemical test of urine
35 or breath is deemed a refusal to submit, and section
36 321J.9 applies. A refusal to submit to a chemical
37 test of blood is not deemed a refusal to submit, but
38 in that case, the peace officer shall then determine
39 which one of the other two substances shall be tested
40 and shall offer the test. If the peace officer fails
41 to offer a test within two hours after the preliminary
42 screening test is administered or refused or the
43 arrest is made, whichever occurs first, a test is not
44 required, and there shall be no revocation under
45 section 321J.9.

46 3. Notwithstanding subsection 2, if the peace
47 officer has reasonable grounds to believe that the
48 person was under the influence of a drug other than
49 alcohol or a combination of alcohol and another drug,
50 a urine test may be required even after a blood or

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1 breath test has been administered. Section 321J.9
2 applies to a refusal to submit to a chemical test of
3 urine requested under this subsection.

4 Sec. 7. NEW SECTION. 321J.7 DEAD OR UNCONSCIOUS
5 PERSONS.

6 A person who is dead, unconscious, or otherwise in
7 a condition rendering the person incapable of consent
8 or refusal is deemed not to have withdrawn the consent
9 provided by section 321J.6, and the test may be given
10 if a licensed physician certifies in advance of the
11 test that the person is dead, unconscious, or
12 otherwise in a condition rendering that person
13 incapable of consent or refusal.

14 Sec. 8. NEW SECTION. 321J.8 STATEMENT OF
15 OFFICER.

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

19 1. If the person refuses to submit to the test,
20 the person's license or operating privilege will be
21 revoked by the department for the applicable period
22 under section 321J.9.

23 2. If the person submits to the test and the
24 results indicate an alcohol concentration as defined
25 in section 321J.1 of .10 or more, the person's license
26 or operating privilege will be revoked by the
27 department for the applicable period under section
28 321J.12.

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

31 Sec. 9. NEW SECTION. 321J.9 REFUSAL TO SUBMIT --
32 REVOCATION.

33 If a person refuses to submit to the chemical
34 testing, a test shall not be given, but the
35 department, upon the receipt of the peace officer's
36 certification, subject to penalty for perjury, that
37 the officer had reasonable grounds to believe the
38 person to have been operating a motor vehicle in
39 violation of section 321J.2, that specified conditions
40 existed for chemical testing pursuant to section
41 321J.6, and that the person refused to submit to the
42 chemical testing, shall revoke the person's motor
43 vehicle license and any nonresident operating
44 privilege for a period of two hundred forty days if
45 the person has no previous revocation within the
46 previous six years under this chapter; and five
47 hundred forty days if the person has one or more
48 previous revocations within the previous six years
49 under this chapter; or if the person is a resident
50 without a license or permit to operate a motor vehicle

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1 in this state, the department shall deny to the person
2 the issuance of a license or permit for the same
3 period a license or permit would be revoked, subject
4 to review as provided in this chapter. The effective
5 date of revocation shall be twenty days after the
6 department has mailed notice of revocation to the
7 person by certified mail or, on behalf of the
8 department, a peace officer offering or directing the
9 administration of a chemical test may serve immediate
10 notice of intention to revoke and of revocation on a
11 person who refuses to permit chemical testing. If the
12 peace officer serves that immediate notice, the peace
13 officer shall take the Iowa license or permit of the
14 driver, if any, and issue a temporary license
15 effective for only twenty days. The peace officer
16 shall immediately send the person's license to the
17 department along with the officer's certificate
18 indicating the person's refusal to submit to chemical
19 testing.

20 Sec. 10. NEW SECTION. 321J.10 TESTS PURSUANT TO
21 WARRANTS.

22 1. Refusal to consent to a test under section
23 321J.6 does not prohibit the withdrawal of a specimen
24 for chemical testing pursuant to a search warrant
25 issued in the investigation of a suspected violation
26 of section 707.5 if all of the following grounds
27 exist:

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

30 b. There are reasonable grounds to believe that
31 one or more of the persons whose driving may have been
32 the proximate cause of the accident was violating
33 section 321J.2 at the time of the accident.

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

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

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

48 b. The person applying for the warrant shall
49 prepare a duplicate warrant and read the duplicate
50 warrant, verbatim, to the magistrate who shall enter,

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1 verbatim, what is read to the magistrate on a form
2 that will be considered the original warrant. The
3 magistrate may direct that the warrant be modified.

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

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

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

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

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

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

45 4. Search warrants issued under this section shall
46 authorize and direct peace officers to secure the
47 withdrawal of blood specimens by medical personnel
48 under section 321J.11. Reasonable care shall be
49 exercised to ensure the health and safety of the
50 persons from whom specimens are withdrawn in execution

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1 of the warrants. If a person from whom a specimen is
2 to be withdrawn objects to the withdrawal of blood,
3 and the person is capable of giving a specimen of
4 breath, and a direct breath testing instrument is
5 readily available, the warrant may be executed by the
6 withdrawal of a specimen of breath for chemical
7 testing.

8 5. The act of any person knowingly resisting or
9 obstructing the withdrawal of a specimen pursuant to a
10 search warrant issued under this section constitutes a
11 contempt punishable by a fine not exceeding one
12 thousand dollars or imprisonment in a county jail not
13 exceeding one year or by both such fine and
14 imprisonment. Also, if the withdrawal of a specimen
15 is so resisted or obstructed, sections 321J.9 and
16 321J.16 apply.

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

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

24 8. Subsections 1 to 7 of this section do not apply
25 where a test may be administered under section 321J.7.

26 9. Medical personnel who use reasonable care and
27 accepted medical practices in withdrawing blood
28 specimens are immune from liability for their actions
29 in complying with requests made of them pursuant to
30 search warrants or pursuant to section 321J.11.

31 Sec. 11. NEW SECTION. 321J.11 TAKING SAMPLE FOR
32 TEST.

33 Only a licensed physician, physician's assistant as
34 defined in section 148C.1, subsection 6, medical
35 technologist, or registered nurse, acting at the
36 request of a peace officer, may withdraw a specimen of
37 blood for the purpose of determining the alcohol
38 concentration or the presence of drugs. However, any
39 peace officer, using devices and methods approved by
40 the commissioner of public safety, may take a specimen
41 of a person's breath or urine for the purpose of
42 determining the alcohol concentration or the presence
43 of drugs. Only new equipment kept under strictly
44 sanitary and sterile conditions shall be used for
45 drawing blood.

46 The person may have an independent chemical test or
47 tests administered at the person's own expense in
48 addition to any administered at the direction of a
49 peace officer. The failure or inability of the person
50 to obtain an independent chemical test or tests does

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1 not preclude the admission of evidence of the results
2 of the test or tests administered at the direction of
3 the peace officer. Upon the request of the person who
4 is tested, the results of the test or tests
5 administered at the direction of the peace officer
6 shall be made available to the person.

7 Sec. 12. NEW SECTION. 321J.12 TEST RESULT
8 REVOCATION.

9 Upon certification, subject to penalty for perjury,
10 by the peace officer that there existed reasonable
11 grounds to believe that the person had been operating
12 a motor vehicle in violation of section 321J.2, that
13 there existed one or more of the necessary conditions
14 for chemical testing described in section 321J.6,
15 subsection 1, and that the person submitted to
16 chemical testing and the test results indicated an
17 alcohol concentration as defined in section 321J.1 of
18 .10 or more, the department shall revoke the person's
19 motor vehicle license or nonresident operating
20 privilege for a period of one hundred eighty days if
21 the person has had no revocation within the previous
22 six years under this chapter, and one year if the
23 person has had one or more previous revocations within
24 the previous six years under this chapter.

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

33 If the peace officer serves that immediate notice,
34 the peace officer shall take the person's Iowa license
35 or permit, if any, and issue a temporary license valid
36 only for twenty days. The peace officer shall
37 immediately send the person's driver's license to the
38 department along with the officer's certificate
39 indicating that the test results indicated an alcohol
40 concentration of .10 or more.

41 The results of a chemical test may not be used as
42 the basis for a revocation of a person's motor vehicle
43 license or nonresident operating privilege if the
44 alcohol concentration indicated by the chemical test
45 minus the established margin of error inherent in the
46 device or method used to conduct the chemical test
47 does not equal an alcohol concentration of .10 or
48 more.

49 Sec. 13. NEW SECTION. 321J.13 HEARING ON
50 REVOCATION --APPEAL.

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1 1. Notice of revocation of a person's motor
2 vehicle license or operating privilege served pursuant
3 to section 321J.9 or 321J.12 shall include a form
4 accompanied by a preaddressed envelope on which the
5 person served may indicate by a checkmark if the
6 person wishes to request a temporary restricted
7 license only or if the person wishes a hearing to
8 contest the revocation. The form shall clearly state
9 on its face that the form must be completed and
10 returned within twenty days of receipt or the person's
11 right to a hearing to contest the revocation is
12 foreclosed. The form shall also be accompanied by a
13 statement of the operation of and the person's rights
14 under this chapter.

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

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

33 b. Whether a test was administered and the test
34 results indicated an alcohol concentration as defined
35 in section 321J.1 of .10 or more.

36 3. After the hearing the department shall order
37 that the revocation be either rescinded or sustained.
38 In the event that the revocation is sustained, the
39 administrative hearing officer who conducted the
40 hearing has authority to issue a temporary restricted
41 license to the person whose motor vehicle license or
42 operating privilege was revoked. Upon receipt of the
43 decision of the department to sustain a revocation,
44 the person contesting the revocation shall have ten
45 days to file a request for review of the decision by
46 the director. The director or the director's designee
47 shall review the decision within fifteen days and
48 shall either rescind or sustain the revocation or
49 order a new hearing. If the director orders a new
50 hearing, the department shall grant the person a new

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1 hearing within thirty days of the director's order.
2 4. A person whose motor vehicle license or
3 operating privilege has been revoked under section
4 321J.9 or 321J.12 may reopen a department hearing on
5 the revocation if the person submits a petition
6 stating that new evidence has been discovered which
7 provides grounds for rescission of the revocation, or
8 if the person submits a petition stating that a
9 criminal action on a charge of a violation of section
10 321J.2 filed as a result of the same circumstances
11 which resulted in the revocation has resulted in a
12 decision in which the court has held that the peace
13 officer did not have reasonable grounds to believe
14 that a violation of section 321J.2 had occurred to
15 support a request for or to administer a chemical test
16 or which has held the chemical test to be otherwise
17 inadmissible or invalid. Such a decision by the court
18 is binding on the department.

19 5. The department shall stay the revocation of a
20 person's motor vehicle license or operating privilege
21 for the period that the person is contesting the
22 revocation under this section or section 321J.14 if it
23 is shown to the satisfaction of the department that
24 the new evidence is material and that there were valid
25 reasons for failure to present it in the contested
26 case proceeding before the department.

27 6. If the department fails to comply with the time
28 limitations of this section regarding granting a
29 hearing, review by the director or the director's
30 designee, or granting a new hearing, and if the
31 request for a hearing or review by the director was
32 properly made under this section, the revocation of
33 the motor vehicle license or operating privilege of
34 the person who made the request for a hearing or
35 review shall be rescinded. This subsection shall not
36 apply in those cases in which a continuance to the
37 hearing has been granted at the request of either the
38 person who requested the hearing or the peace officer
39 who requested or administered the chemical test.

40 Sec. 14. NEW SECTION. 321J.14 JUDICIAL REVIEW.

41 Judicial review of an action of the department may
42 be sought in accordance with the terms of the Iowa
43 administrative procedure Act, chapter 17A.
44 Notwithstanding the terms of that chapter, a petition
45 for judicial review may be filed in the district court
46 in the county where the alleged events occurred or in
47 the county in which the administrative hearing was
48 held.

49 Sec. 15. NEW SECTION. 321J.15 EVIDENCE IN ANY
50 ACTION.

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

14 Sec. 16. NEW SECTION. 321J.16 PROOF OF REFUSAL
15 ADMISSIBLE.

16 If a person refuses to submit to a chemical test,
17 proof of refusal is admissible in any civil or
18 criminal action or proceeding arising out of acts
19 alleged to have been committed while the person was
20 operating a motor vehicle in violation of section
21 321J.2.

22 Sec. 17. NEW SECTION. 321J.17 CIVIL PENALTY --
23 SEPARATE FUND -- REINSTATEMENT.

24 When the department revokes a person's motor
25 vehicle license or nonresident operating privilege
26 under this chapter, the department shall assess the
27 person a civil penalty of one hundred dollars. The
28 money collected by the department under this section
29 shall be transmitted to the treasurer of state who
30 shall deposit the money in a separate fund dedicated
31 to and used for the purposes of chapter 912, and for
32 the operation of a missing person clearinghouse and
33 domestic abuse registry by the department of public
34 safety. A temporary restricted license shall not be
35 issued or a motor vehicle license or nonresident
36 operating privilege reinstated until the civil penalty
37 has been paid.

38 Sec. 18. NEW SECTION. 321J.18 OTHER EVIDENCE.

39 This chapter does not limit the introduction of any
40 competent evidence bearing on the question of whether
41 a person was under the influence of an alcoholic
42 beverage or a drug, including the results of chemical
43 tests of specimens of blood, breath or urine obtained
44 more than two hours after the person was operating a
45 motor vehicle.

46 Sec. 19. NEW SECTION. 321J.19 INFORMATION
47 RELAYED TO OTHER STATES.

48 When it has been finally determined under this
49 chapter that a nonresident's privilege to operate a
50 motor vehicle in this state has been revoked or

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1 denied, the department shall give information in
2 writing of the action taken to the official in charge
3 of traffic control or public safety of the state of
4 the person's residence and of any state in which the
5 person has a license.

6 Sec. 20. NEW SECTION. 321J.20 TEMPORARY
7 RESTRICTED LICENSE.

8 1. The department may, on application, issue a
9 temporary restricted license to a person whose motor
10 vehicle license is revoked under this chapter allowing
11 the person to drive to and from the person's home and
12 specified places at specified times which can be
13 verified by the department and which are required by
14 the person's full-time or part-time employment,
15 continuing health care or the continuing health care
16 of another who is dependent upon the person,
17 continuing education while enrolled in an educational
18 institution on a part-time or full-time basis and
19 while pursuing a course of study leading to a diploma,
20 degree, or other certification of successful

21 educational completion, substance abuse treatment, and
22 court-ordered community service responsibilities if
23 the person's motor vehicle license has not been
24 revoked under 321J.4, 321J.9, or 321J.12 within the
25 previous six years and if any of the following apply:

26 a. The person's motor vehicle license is revoked
27 under section 321J.4, subsection 1, 2, 4, or 6.

28 b. The person's motor vehicle license is revoked
29 under section 321J.9 and the person has entered a plea
30 of guilty on a charge of a violation of section 321J.2
31 which arose from the same set of circumstances which
32 resulted in the person's motor vehicle license
33 revocation under section 321J.9 and the guilty plea is
34 not withdrawn at the time of or after application for
35 the temporary restricted license.

36 c. The person's motor vehicle license is revoked
37 under section 321J.12.

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

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

48 3. A person holding a temporary restricted license
49 issued by the department under this section shall not
50 operate a motor vehicle for pleasure.

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1 Sec. 21. NEW SECTION. 321J.21 DRIVING WHILE
2 LICENSE DENIED OR REVOKED.

3 A person whose motor vehicle license or nonresident
4 operating privilege has been denied or revoked as
5 provided in this chapter and who drives a motor
6 vehicle upon the highways of this state while the
7 license or privilege is denied or revoked commits a
8 serious misdemeanor. The department, upon receiving
9 the record of the conviction of a person under this
10 section upon a charge of driving a motor vehicle while
11 the license of the person was revoked or denied, shall
12 extend the period of revocation or denial for an
13 additional like period, and the department shall not
14 issue a new license during the additional period.

15 Sec. 22. NEW SECTION. 321J.22 COURT-ORDERED
16 DRINKING DRIVERS COURSE.

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

19 a. "Course for drinking drivers" means an approved
20 course designed to inform the offender about drinking
21 and driving and encourage the offender to assess the
22 offender's own drinking and driving behavior in order
23 to select practical alternatives.

24 b. "Satisfactory completion of a course" means
25 receiving at the completion of a course a grade from
26 the course instructor of "C" or "2.0," or better.

27 2. After a conviction for, or a plea of guilty of,
28 a violation of section 321J.2, the court in addition
29 to its power to commit the defendant for treatment of
30 alcoholism under section 321J.3, may order the
31 defendant, at the defendant's own expense, to enroll
32 in, attend, and successfully complete a course for
33 drinking drivers. The court may alternatively or
34 additionally require the defendant to seek evaluation,
35 treatment or rehabilitation services under section
36 125.33 at the defendant's expense and to furnish
37 evidence of successful completion. A copy of the
38 order shall be forwarded to the department.

39 3. The course provided in this section shall be
40 offered on a regular basis at each area school as
41 defined in section 280A.2. Enrollment in the courses
42 is not limited to persons ordered to enroll, attend
43 and successfully complete the course under subsection
44 2, and any person convicted of a violation of section
45 321J.2 who was not ordered to enroll in a course may
46 enroll in and attend a course for drinking drivers.
47 The course required by this section shall be taught by
48 the area schools under the department of public
49 instruction and approved by the department. The
50 department of public instruction shall establish

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1 reasonable fees to defray the expense of obtaining
2 classroom space, instructor salaries, and class
3 materials. A person shall not be denied enrollment in
4 a course by reason of the person's indigency.

5 4. An employer shall not discharge a person from
6 employment solely for the reason of work absence to
7 attend a course required by this section. Any
8 employer who violates this section is liable for
9 damages which include but are not limited to actual
10 damages, court costs, and reasonable attorney fees.
11 The person may also petition the court for imposition
12 of a cease and desist order against the person's
13 employer and for reinstatement to the person's
14 previous position of employment.

15 5. The department of public instruction shall
16 prepare a list of the locations of the courses taught
17 under this section, the dates and times taught, the
18 procedure for enrollment, and the schedule of course
19 fees. The list shall be kept current and a copy of
20 the list shall be sent to each court having
21 jurisdiction over offenses provided in this chapter.

22 6. The department of public instruction shall
23 maintain enrollment, attendance, successful and
24 nonsuccessful completion data on the persons ordered
25 to enroll, attend and successfully complete a course
26 for drinking drivers. This data shall be forwarded to
27 the court.

28 Sec. 23. NEW SECTION. ROADBLOCKS CONDUCTED BY LAW
29 ENFORCEMENT AGENCIES.

30 1. The law enforcement agencies of this state may
31 conduct emergency vehicle roadblocks in response to
32 immediate threats to the health, safety, and welfare
33 of the public; and otherwise may conduct routine
34 vehicle roadblocks only as provided in this section.
35 Routine vehicle roadblocks may be conducted to enforce
36 compliance with the law regarding any of the
37 following:

38 a. The licensing of operators of motor vehicles.

39 b. The registration of motor vehicles.

40 c. The safety equipment required on motor
41 vehicles.

42 d. The provisions of chapters 109 and 110.

43 2. Any routine vehicle roadblock conducted under
44 this section shall meet the following requirements:

45 a. The location of the roadblock, the time during
46 which the roadblock will be conducted, and the
47 procedure to be used while conducting the roadblock,
48 shall be determined by policymaking administrative
49 officers of the law enforcement agency.

50 b. The roadblock location shall be selected for

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1 its safety and visibility to oncoming motorists, and
2 adequate advance warning signs, illuminated at night
3 or under conditions of poor visibility, shall be
4 erected to provide timely information to approaching
5 motorists of the roadblock and its nature.

6 c. There shall be uniformed officers and marked
7 official vehicles of the law enforcement agency or
8 agencies involved, in sufficient quantity and
9 visibility to demonstrate the official nature of the
10 roadblock.

11 d. The selection of motor vehicles to be stopped
12 shall not be arbitrary.

13 e. The roadblock shall be conducted to assure the
14 safety of and to minimize the inconvenience of the
15 motorists involved.

16 Sec. 24. NEW SECTION. 123.151 POSTING NOTICE ON
17 DRUNK DRIVING LAWS REQUIRED.

18 State liquor stores and holders of liquor control
19 licenses, wine permits, or beer permits shall post in
20 a prominent place in the state liquor stores or
21 licensed premises notice explaining the operation of
22 and penalties of the laws which prohibit the operation
23 of a motor vehicle by a person who is intoxicated.
24 The size, print size, location, and content of the
25 notice shall be established by rule of the department.

26 Sec. 25. Section 125.44, unnumbered paragraph 6,
27 Code 1985, is amended to read as follows:

28 The department is liable for the cost of care,
29 treatment, and maintenance of a substance abuser
30 admitted to the facility voluntarily or pursuant to
31 section 125.75, 125.81, or 125.91 or section ~~321-2817~~
32 ~~321-2837~~-subsection-37 321J.3 or 204.409, subsection 2
33 only to those facilities that have a contract with the
34 department under this section, only for the amount
35 computed according to and within the limits of
36 liability prescribed by this section, and only when
37 the substance abuser is unable to pay the costs and
38 there is no other person, firm, corporation or
39 insurance company bound to pay the costs.

40 Sec. 26. NEW SECTION. 217A.30 ASSIGNMENT TO
41 TREATMENT FACILITIES.

42 1. The director of the department of corrections
43 may assign an offender committed to the custody of the
44 director for a felony violation of chapter 321J to a
45 facility which meets all of the following
46 requirements:

47 a. Is a treatment facility meeting the licensure
48 standards of the division of substance abuse of the
49 department of public health.

50 b. Is a facility meeting applicable standards of

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1 the American corrections association.

2 c. Is a facility which meets any other rule or
3 requirement adopted by the department pursuant to
4 chapter 17A.

5 2. The assignment of an offender pursuant to
6 subsection 1 shall be for purposes of substance abuse
7 treatment and education, and may include work programs
8 for the offender at times when the offender is not in
9 substance abuse treatment or education.

10 3. Offenders assigned to a facility pursuant to
11 this section shall not be included in calculations
12 used to determine the existence of a prison
13 overcrowding state of emergency.

14 4. The director shall prepare proposed
15 administrative rules for the consideration of the
16 administrative rules review committee for the funding
17 of the program by means of self contribution by the
18 offenders, insurance reimbursement on behalf of
19 offenders, or other forms of funding, program
20 structure, criteria for the evaluation of facilities
21 and offenders for participation in the programs, and
22 all other issues the director shall deem appropriate.
23 Proposed rules prepared pursuant to this subsection
24 shall be submitted to the administrative rules review
25 committee on or before September 15, 1986.

26 Sec. 27. Section 307.27, subsection 5, Code 1985,
27 is amended to read as follows:

28 5. Administer the provisions of chapters 321A,
29 321B, 321E, and 321F, and 321J relating to motor
30 vehicle financial responsibility, the implied consent
31 law, the movement of vehicles of excessive size and
32 weight and the leasing and renting of vehicles.

33 Sec. 28. Section 321.178, subsection 1, unnumbered
34 paragraph 1, Code 1985, is amended to read as follows:

35 An approved driver education course as programmed
36 by the department of public instruction shall consist
37 of at least thirty clock hours of classroom
38 instruction, and six or more clock hours of laboratory
39 instruction of which at least three clock hours shall
40 consist of street or highway driving. An approved
41 course shall include a minimum of two hours of
42 classroom instruction concerning substance abuse as
43 part of its curriculum. After the student has
44 completed three clock hours of street or highway
45 driving and has demonstrated to the instructor an
46 ability to properly operate a motor vehicle and upon
47 written request of a parent or guardian, the
48 instructor may waive the remaining required laboratory
49 instruction.

50 Sec. 29. Section 321.191, unnumbered paragraph 2,

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1 Code 1985, is amended to read as follows:

2 There shall be a fee of twenty dollars for
3 reinstatement of a chauffeur's license or operator's
4 license which is, after notice and opportunity for
5 hearing, suspended or revoked pursuant to sections
6 321.193, 321.209 and 321.210, except subsection 4
7 thereof, 321.513, 321.560, 321A.6, and chapter 321B
8 321J. The twenty-dollar fee shall be collected only
9 if the person whose license was suspended or revoked
10 was served personally with notice. If the person
11 whose license was suspended or revoked was served
12 notice by certified mail, the reinstatement fee shall
13 be ten dollars.

14 Sec. 30. Section 321.196, Code Supplement 1985, is
15 amended by adding the following new unnumbered
16 paragraph:

17 NEW UNNUMBERED PARAGRAPH. Prior to the renewal of
18 a license pursuant to this section, the department
19 shall issue to each applicant information on the law
20 relating to the operation of a motor vehicle while
21 intoxicated and statistical information relating to
22 the number of injuries and fatalities occurring as a
23 result of the operation of motor vehicles while
24 intoxicated.

25 Sec. 31. Section 321.209, subsection 2, Code 1985,
26 is amended by striking the subsection.

27 Sec. 32. Section 321.210, Code 1985, is amended by
28 adding the following new unnumbered paragraph:

29 NEW UNNUMBERED PARAGRAPH. The department shall not
30 consider or assess any points for speeding violations
31 of ten miles per hour or less over the legal speed
32 limit in speed zones that have a legal speed limit
33 greater than thirty-five miles per hour in determining
34 a license suspension under this section. This
35 paragraph shall apply to only the first two such
36 violations which occur within any twelve-month period.

37 Sec. 33. Section 321.213, Code 1985, is amended to
38 read as follows:

39 321.213 LICENSE SUSPENSIONS OR REVOCATIONS DUE TO
40 VIOLATIONS BY JUVENILE DRIVERS.

41 Upon the entering of an order at the conclusion of
42 an adjudicatory hearing under section 232.47 that the
43 child violated a provision of this chapter or chapter
44 321A or chapter 321J for which the penalty is greater
45 than a simple misdemeanor, ~~or that the child refused~~
46 ~~to submit to chemical testing under section 321B-4,~~
47 the clerk of the juvenile court in the adjudicatory
48 hearing shall forward a copy of the adjudication to
49 the department. Notwithstanding section 232.55, a
50 final adjudication in a juvenile court that the child

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1 violated a provision of this chapter or chapter 321A
 2 or chapter 321J constitutes a final conviction of a
 3 violation of a provision of this chapter or chapter
 4 321A or chapter 321J for purposes of section 321.189,
 5 subsection 2, paragraph "b", and sections 321.193,
 6 321.194, 321.200, 321.209, 321.210, 321.215, and
 7 321A.17. ~~Notwithstanding section 232.557, the director~~
 8 ~~shall revoke the license or permit of a child under~~
 9 ~~section 321B.13 upon receipt of a copy of the final~~
 10 ~~adjudication in a juvenile court that the child~~
 11 ~~refused to submit to chemical testing under section~~
 12 ~~321B.4.~~

13 Sec. 34. Section 321.218, unnumbered paragraph 1,
 14 Code Supplement 1985, is amended to read as follows:

15 A person whose operator's or chauffeur's license or
 16 driving privilege has been denied, canceled, suspended
 17 or revoked as provided in this chapter, and who drives
 18 a motor vehicle upon the highways of this state while
 19 the license or privilege is denied, canceled,
 20 suspended, or revoked commits a simple misdemeanor.
 21 However, a person whose license or driving privilege
 22 has been revoked under section 321.209 or chapter 321B
 23 and who drives a motor vehicle upon the highways of
 24 this state while the license or privilege is revoked
 25 commits a serious misdemeanor. The sentence imposed
 26 under this section shall not be suspended by the
 27 court, notwithstanding section 907.3 or any other
 28 statute. The department, upon receiving the record of
 29 the conviction of a person under this section upon a
 30 charge of driving a motor vehicle while the license of
 31 the person was suspended or revoked, shall, except for
 32 licenses suspended under section 321.513, extend the
 33 period of suspension or revocation for an additional
 34 like period, and the department shall not issue a new
 35 license during the additional period.

36 Sec. 35. Section 321.228, subsection 2, Code 1985,
 37 is amended to read as follows:

38 2. The provisions of sections 321.261 to 321.274,
 39 section and sections 321.277 and sections 321.280 to
 40 ~~321.282~~ shall apply upon highways and elsewhere
 41 throughout the state.

42 Sec. 36. Section 321.233, unnumbered paragraph 1,
 43 Code Supplement 1985, is amended to read as follows:

44 This chapter, except sections 321.277 and
 45 sections 321.280 to ~~321.282~~ does not apply to persons
 46 and motor vehicles and other equipment while actually
 47 engaged in work upon the surface of a highway
 48 officially closed to traffic but does apply to such
 49 persons and vehicles when traveling to or from such
 50 work. The minimum speed restriction of section

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1 321.285, subsection 8, and the provisions of sections
2 321.297 and 321.298 do not apply to road workers
3 operating maintenance equipment owned by or under
4 lease to any state or local authority while engaged in
5 road maintenance, road blading, snow and ice control
6 and removal, and granular resurfacing work on a
7 highway, whether or not the highway is closed to
8 traffic.

9 Sec. 37. Section 321.555, subsection 1, paragraph
10 b, Code 1985, is amended to read as follows:

11 b. Operating a motor vehicle in violation of
12 section ~~321.281~~ 321J.2.

13 Sec. 38. Section ~~321A.17~~, subsection 1, Code 1985,
14 is amended to read as follows:

15 1. Whenever the director, under any law of this
16 state, suspends or revokes the license of any person
17 upon receiving record of a conviction or a forfeiture
18 of bail or revokes the license of any person pursuant
19 to chapter ~~321B~~ 321J, the director shall also suspend
20 the registration for all motor vehicles registered in
21 the name of the person, except that the director shall
22 not suspend the registration, unless otherwise
23 required by law, if the person has previously given or
24 immediately gives and thereafter maintains proof of
25 financial responsibility with respect to all motor
26 vehicles registered by the person.

27 Sec. 39. Section 331.653, subsection 33, Code
28 Supplement 1985, is amended to read as follows:

29 33. Carry out duties relating to the enforcement
30 of laws prohibiting the operation of a motor vehicle
31 while under the influence of an alcoholic beverage as
32 provided in chapter ~~321B~~ 321J.

33 Sec. 40. Section ~~602.8102~~, subsection 51, Code
34 Supplement 1985, is amended to read as follows:

35 51. Forward to the department of transportation a
36 copy of the record of each conviction or forfeiture of
37 bail of a person charged with the violation of the
38 laws regulating the operation of vehicles on public
39 roads as provided in sections ~~321.281~~ 321J.2 and
40 321.491.

41 Sec. 41. NEW SECTION. 707.6A HOMICIDE BY
42 VEHICLE.

43 1. A person commits a class "D" felony when the
44 person unintentionally causes the death of another by
45 either of the following means:

46 a. Operating a motor vehicle while under the
47 influence of alcohol or a drug or a combination of
48 such substances or while having an alcohol
49 concentration of .10 or more, in violation of section
50 321J.2.

1 b. Driving a motor vehicle in a reckless manner
2 with willful or wanton disregard for the safety of
3 persons or property, in violation of section 321.277.

4 2. A person commits an aggravated misdemeanor when
5 the person unintentionally causes the death of another
6 by operating a motor vehicle in any of the following
7 manners:

8 a. Drag racing, in violation of section 321.278.

9 b. Eluding or attempting to elude a pursuing law
10 enforcement vehicle, in violation of section 321.279.

11 3. As used in this section, "motor vehicle"
12 includes any vehicle defined as a motor vehicle in
13 section 321.1.

14 Sec. 42. Section 804.31, unnumbered paragraph 2,
15 Code Supplement 1985, is amended to read as follows:

16 This section does not prohibit the request for and
17 administration of a preliminary breath screening test
18 or the request for and administration of a chemical
19 test of a body substance or substances under chapter
20 ~~321B~~ 321J prior to the arrival of a qualified
21 interpreter for a hearing impaired person who is
22 believed to have committed a violation of section
23 ~~321-281~~ 321J.2. However, upon the arrival of the
24 interpreter the officer who requested the chemical
25 test shall explain through the interpreter the reason
26 for the testing, the consequences of the person's
27 consent or refusal, and the ramifications of the
28 results of the test, if one was administered.

29 Sec. 43. Section 902.3, Code 1985, is amended to
30 read as follows:

31 902.3 INDETERMINATE SENTENCE.

32 When a judgment of conviction of a felony, other
33 than a class "A" felony is entered against a person,
34 the court, in imposing a sentence of confinement,
35 shall commit the person into the custody of the
36 director of the Iowa department of corrections for an
37 indeterminate term, the maximum length of which shall
38 not exceed the limits as fixed by section 707.3 or
39 section 902.9 nor shall the term be less than the
40 minimum term imposed by law, if a minimum sentence is
41 provided. However, the court may sentence a person
42 convicted of a class "D" felony for a violation of
43 section 321J.2 to imprisonment for up to one year in a
44 county jail under section 902.9, subsection 4, and the
45 person shall not be under the custody of the director
46 of the Iowa department of corrections.

47 Sec. 44. Section 902.9, subsection 4, Code 1985,
48 is amended to read as follows:

49 4. A class "D" felon, not an habitual offender,
50 shall be confined for no more than five years, and in

1 addition may be sentenced to a fine of not more than
2 seven thousand five hundred dollars. A class "D"
3 felon, such felony being for a violation of section
4 321J.2, may be sentenced to imprisonment for up to one
5 year in the county jail.

6 Sec. 45. Section 907.3, subsection 1, paragraph g,
7 Code 1985, is amended to read as follows:

8 g. The offense is a violation of section ~~321-201~~
9 321J.2 and, within the previous six years, the person
10 has been convicted of a violation of that section or
11 the person's driver's license has been revoked
12 pursuant to that ~~section or chapter 321B~~ section
13 321J.4, 321J.9, or 321J.12.

14 Sec. 46. Section 912.1, subsection 4, Code 1985,
15 is amended to read as follows:

16 4. "Crime" means conduct that occurs or is
17 attempted in this state, poses a substantial threat of
18 personal injury or death, and is punishable as a
19 felony, an aggravated misdemeanor, or a serious
20 misdemeanor, or would be so punishable but for the
21 fact that the person engaging in the conduct lacked
22 the capacity to commit the crime under the laws of
23 this state. "Crime" does not include conduct arising
24 out of the ownership, maintenance, or use of a motor
25 vehicle, motorcycle, motorized bicycle, train, boat,
26 or aircraft except for violations of section ~~321-201~~
27 321J.2 or when the intention is to cause personal
28 injury or death. A plea or verdict of guilty of a
29 charge under section ~~321-201~~ 321J.2 or a license
30 revocation under section ~~321B-13~~ 321J.9 or ~~321B-16~~
31 321J.12 shall be considered by the department as
32 evidence of a violation of section ~~321-201~~ 321J.2 for
33 the purposes of this chapter.

34 Sec. 47. Section 321.281, Code Supplement 1985, is
35 repealed.

36 Sec. 48. Section 321.282, Code 1985, is repealed.

37 Sec. 49. Section 321.283, Code Supplement 1985, is
38 repealed.

39 Sec. 50. Chapter 321B, Code 1985 and Code
40 Supplement 1985, is repealed.

41 Sec. 51. References in chapter 321J to actions
42 which occurred previously under "this chapter" or
43 "this section" include the preceding Code chapter or
44 section which covers the same or substantially similar
45 actions.

46 Sec. 52. This Act applies to any judicial or
47 administrative action which arises due to violation of
48 a section of this Act or an implementing rule, and
49 which occurs after the effective date of this Act.

50 This Act also applies to any judicial or
1 administrative action which arose prior to the
2 effective date of this Act due to a violation of a
3 preceding Code section or implementing rule which was
4 the same or substantially similar to a section in this
5 Act, or an implementing rule if the defendant or
6 defendant's counsel requests that the action proceed
7 under this Act."

July 1, 1986 and continue the procedure until June 30, 1989. The drug utilization review program shall report to the general assembly by January 10 of each year of the monitoring procedure, indicating any cost savings or increased usage of generic drugs.

Approved May 23, 1986

CHAPTER 1220
PENALTIES FOR OPERATION OF MOTOR VEHICLES
H.F. 2493

AN ACT relating to criminal penalties arising from the operation of motor vehicles.

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

Section 1. NEW SECTION. 321J.1 DEFINITIONS.

As used in this chapter unless the context otherwise requires:

1. "Alcohol concentration" means the number of grams of alcohol per any of the following:
 - a. One hundred milliliters of blood.
 - b. Two hundred ten liters of breath.
 - c. Sixty-seven milliliters of urine.
2. "Alcoholic beverage" includes alcohol, wine, spirits, beer, or any other beverage which contains ethyl alcohol and is fit for human consumption.
3. "Arrest" includes but is not limited to taking into custody pursuant to section 232.19.
4. "Department" means the state department of transportation.
5. "Director" means the director of transportation or the director's designee.
6. "Motor vehicle license" means any license or permit issued to a person to operate a motor vehicle in this state, including but not limited to an operator, chauffeur, or motorized bicycle license and an instruction or temporary permit.
7. "Peace officer" means:
 - a. A member of the highway patrol.
 - b. A police officer under civil service as provided in chapter 400.
 - c. A sheriff.
 - d. A regular deputy sheriff who has had formal police training.
 - e. Any other law enforcement officer who has satisfactorily completed an approved course relating to motor vehicle operators under the influence of alcoholic beverages at the Iowa law enforcement academy or a law enforcement training program approved by the department of public safety.
8. "Serious injury" means a bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes protracted loss or impairment of the function of any bodily organ or major bodily member, or which causes the loss of any bodily member.

Sec. 2. NEW SECTION. 321J.2 OPERATING WHILE UNDER THE INFLUENCE OF ALCOHOL OR A DRUG OR WHILE HAVING AN ALCOHOL CONCENTRATION OF .10 OR MORE. (OWI)

1. A person commits the offense of operating while intoxicated if the person operates a motor vehicle in this state in either of the following conditions:
 - a. While under the influence of an alcoholic beverage or other drug or a combination of such substances.
 - b. While having an alcohol concentration as defined in section 321J.1 of .10 or more.
2. A person who violates this section commits:

a. A serious misdemeanor for the first offense and shall be imprisoned in the county jail for not less than forty-eight hours to be served as ordered by the court, less credit for any time the person was confined in a jail or detention facility following arrest, and assessed a fine of not less than five hundred dollars nor more than one thousand dollars. As an alternative to a portion or all of the fine, the court may order the person to perform not more than two hundred hours of unpaid community service. The court may accommodate the sentence to the work schedule of the defendant.

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

c. A class "D" felony for a third offense and each subsequent offense and shall be imprisoned in the county jail or community-based correctional facility for not less than thirty days, which minimum term cannot be suspended notwithstanding section 901.5, subsection 3, and section 907.3, subsection 2, and assessed a fine of not less than seven hundred fifty dollars.

3. No conviction for, deferred judgment for, or plea of guilty to, a violation of this section which occurred more than six years prior to the date of the violation charged shall be considered in determining that the violation charged is a second, third, or subsequent offense. For the purpose of determining if a violation charged is a second, third, or subsequent offense, deferred judgments pursuant to section 907.3 for violations of this section and convictions or the equivalent of deferred judgments for violations in any other states under statutes substantially corresponding to this section shall be counted as previous offenses. The courts shall judicially notice the statutes of other states which define offenses substantially equivalent to the one defined in this section and can therefore be considered corresponding statutes. Each previous violation shall be considered a separate previous offense without regard to whether each was complete as to commission and conviction or deferral of judgment following or prior to any other previous violation.

4. A person shall not be convicted and sentenced for more than one violation of this section if the violation is shown to have been committed by either or both of the means described in subsection 1 in the same occurrence.

5. The clerk of court shall immediately certify to the department a true copy of each order entered with respect to deferral of judgment, deferral of sentence or pronouncement of judgment and sentence for a defendant under this section.

6. This section does not apply to a person operating a motor vehicle while under the influence of a drug if the substance was prescribed for the person and was taken under the prescription and in accordance with the directions of a medical practitioner as defined in section 155.3, subsection 11, if there is no evidence of the consumption of alcohol and the medical practitioner had not directed the person to refrain from operating a motor vehicle.

7. In any prosecution under this section, evidence of the results of analysis of a specimen of the defendant's blood, breath, or urine is admissible upon proof of a proper foundation. The alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn within two hours after the defendant was driving or in physical control of a motor vehicle is presumed to be the alcohol concentration at the time of driving or being in physical control of the motor vehicle.

8. The court shall order a defendant convicted of or receiving a deferred judgment for a violation of this section to make restitution, in an amount not to exceed two thousand dollars, for damages resulting directly from the violation. An amount paid pursuant to this restitution order shall be credited toward any adverse judgment in a subsequent civil proceeding arising from the same occurrence. However, other than establishing a credit, a restitution proceeding pursuant to this section shall not be given evidentiary or preclusive effect in a subsequent civil proceeding arising from the same occurrence.

9. In any prosecution under this section, the results of a chemical test may not be used to prove a violation of paragraph "b" of subsection 1 if the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the chemical test does not equal an alcohol concentration of .10 or more.

Sec. 3. NEW SECTION. 321J.3 COURT ORDERED SUBSTANCE ABUSE EVALUATION OR TREATMENT.

1. On a conviction for a violation of section 321J.2, the court may order the defendant to attend a course for drinking drivers under section 321J.22. If the defendant submitted to a chemical test on arrest for the violation of section 321J.2 and the test indicated an alcohol concentration of .20 or higher, the court shall order the defendant, on conviction, to undergo a substance abuse evaluation and the court may order the defendant to follow the recommendations proposed in the substance abuse evaluation for appropriate substance abuse treatment for the defendant. Court ordered substance abuse treatment is subject to the periodic reporting requirements of section 125.86. If a defendant is committed by the court to a substance abuse treatment facility, the administrator of the facility shall report to the court when it is determined that the defendant has received the maximum benefit of treatment at the facility and the defendant shall be released from the facility. The time for which the defendant is committed for treatment shall be credited against the defendant's sentence. The court may prescribe the length of time for the evaluation and treatment or it may request that the area school conducting the course for drinking drivers which the person is ordered to attend or the treatment program to which the person is committed immediately report to the court when the person has received maximum benefit from the course for drinking drivers or treatment program or has recovered from the person's addiction, dependency, or tendency to chronically abuse alcohol or drugs. A person committed under this section who does not possess sufficient income or estate to make payment of the costs of the treatment in whole or in part shall be considered a state patient and the costs of treatment shall be paid as provided in section 125.44. A defendant who fails to carry out the order of the court or who fails to successfully complete or attend a course for drinking drivers or an ordered substance abuse treatment program shall be confined in the county jail for twenty days in addition to any other imprisonment ordered by the court or may be ordered to perform unpaid community service work, and shall be placed on probation for one year with a violation of this probation punishable as contempt of court.

2. As a condition of a suspended sentence or portion of sentence for a second, third, or subsequent offense in violation of section 321J.2, the court upon hearing may commit the defendant for inpatient treatment of alcoholism or drug addiction or dependency to any hospital, institution, or community correctional facility in Iowa providing such treatment. The time for which the defendant is committed for treatment shall be credited against the defendant's sentence. The court may prescribe the length of time for the evaluation and treatment or it may request that the hospital to which the person is committed immediately report to the court when the person has received maximum benefit from the program of the hospital or institution or has recovered from the person's addiction, dependency, or tendency to chronically abuse alcohol or drugs. A person committed under this section who does not possess sufficient income or estate to make payment of the costs of the treatment in whole or in part shall be considered a state patient and the costs of treatment shall be paid as provided in section 125.44.

Sec. 4. NEW SECTION. 321J.4 REVOCATION OF MOTOR VEHICLE LICENSE ON CONVICTION OR COURT ORDER.

1. If a defendant is convicted of a violation of section 321J.2 and the defendant's motor vehicle license or nonresident operating privilege has not been revoked under section 321J.9 or 321J.12 for the occurrence from which the arrest arose, the department shall revoke the defendant's motor vehicle license or nonresident operating privilege for one hundred eighty days if the defendant has had no previous conviction under section 321J.2 or revocation under section

321J.9 or 321J.12 within the previous six years and for one year if the defendant has had one or more previous convictions or revocations under those sections within the previous six years.

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

3. a. Upon a plea or verdict of guilty of a third or subsequent violation of section 321J.2, the court shall order the department to revoke the defendant's motor vehicle license or nonresident operating privilege for a period of six years. The court shall require the defendant to surrender to it all Iowa licenses or permits held by the defendant, which the court shall forward to the department with a copy of the order for revocation.

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

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

(2) The defendant has not been convicted, since the date of the revocation order, of any subsequent violations of section 321J.2 or 123.46, or any comparable city or county ordinance, and the defendant has not, since the date of the revocation order, submitted to a chemical test under this chapter that indicated an alcohol concentration as defined in section 321J.1 of .10 or more, or refused to submit to chemical testing under this chapter.

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

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

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

4. Upon a plea or verdict of guilty of a violation of section 321J.2 which involved a personal injury, the court shall determine in open court, from consideration of the information in the file and any other evidence the parties may submit, whether a serious injury was sustained by any person other than the defendant and, if so, whether the defendant's conduct in violation of section 321J.2 caused the serious injury. If the court so determines, the court shall order the department to revoke the defendant's motor vehicle license or nonresident operating privilege for a period of one year in addition to any other period of suspension or revocation. The defendant shall surrender to the court any Iowa license or permit and the court shall forward it to the department with a copy of the order for revocation.

5. Upon a plea or verdict of guilty of a violation of section 321J.2 which involved a death, the court shall determine in open court, from consideration of the information in the file and any other evidence the parties may submit, whether a death occurred and, if so, whether the defendant's conduct in violation of section 321J.2 caused the death. If the court so determines, the court shall order the department to revoke the defendant's motor vehicle license or nonresident operating privilege for a period of six years. The defendant shall surrender to the court any Iowa license or permit and the court shall forward it to the department with a copy of the order for revocation.

6. If a license or permit to operate a motor vehicle is revoked or denied under this section or section 321J.9 or 321J.12, the period of revocation or denial shall be the period provided for such a revocation or until the defendant reaches the age of eighteen whichever period is longer.

Sec. 5. NEW SECTION. 321J.5 PRELIMINARY SCREENING TEST.

When a peace officer has reasonable grounds to believe that a motor vehicle operator may be violating or has violated section 321J.2, or the operator has been involved in a motor vehicle collision resulting in injury or death, the peace officer may request the operator to provide a sample of the operator's breath for a preliminary screening test using a device approved by the commissioner of public safety for that purpose. The results of this preliminary screening test may be used for the purpose of deciding whether an arrest should be made and whether to request a chemical test authorized in this chapter, but shall not be used in any court action except to prove that a chemical test was properly requested of a person pursuant to this chapter.

Sec. 6. NEW SECTION. 321J.6 IMPLIED CONSENT TO TEST.

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

- a. A peace officer has lawfully placed the person under arrest for violation of section 321J.2.
- b. The person has been involved in a motor vehicle accident or collision resulting in personal injury or death.
- c. The person has refused to take a preliminary breath screening test provided by this chapter.
- d. The preliminary breath screening test was administered and it indicated an alcohol concentration as defined in section 321J.1 of .10 or more.
- e. The preliminary breath screening test was administered and it indicated an alcohol concentration of less than .10 and the peace officer has reasonable grounds to believe that the person was under the influence of a drug other than alcohol or a combination of alcohol and another drug.

2. The peace officer shall determine which of the three substances, breath, blood, or urine, shall be tested. Refusal to submit to a chemical test of urine or breath is deemed a refusal to submit, and section 321J.9 applies. A refusal to submit to a chemical test of blood is not deemed a refusal to submit, but in that case, the peace officer shall then determine which one of the other two substances shall be tested and shall offer the test. If the peace officer fails to offer a test within two hours after the preliminary screening test is administered or refused or the arrest is made, whichever occurs first, a test is not required, and there shall be no revocation under section 321J.9.

3. Notwithstanding subsection 2, if the peace officer has reasonable grounds to believe that the person was under the influence of a drug other than alcohol or a combination of alcohol and another drug, a urine test may be required even after a blood or breath test has been administered. Section 321J.9 applies to a refusal to submit to a chemical test of urine requested under this subsection.

Sec. 7. NEW SECTION. 321J.7 DEAD OR UNCONSCIOUS PERSONS.

A person who is dead, unconscious, or otherwise in a condition rendering the person incapable of consent or refusal is deemed not to have withdrawn the consent provided by section 321J.6, and the test may be given if a licensed physician certifies in advance of the test that the person is dead, unconscious, or otherwise in a condition rendering that person incapable of consent or refusal.

Sec. 8. NEW SECTION. 321J.8 STATEMENT OF OFFICER.

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

1. If the person refuses to submit to the test, the person's license or operating privilege will be revoked by the department for the applicable period under section 321J.9.
2. If the person submits to the test and the results indicate an alcohol concentration as defined in section 321J.1 of .10 or more, the person's license or operating privilege will be revoked by the department for the applicable period under section 321J.12.

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

Sec. 9. NEW SECTION. 321J.9 REFUSAL TO SUBMIT - REVOCATION.

If a person refuses to submit to the chemical testing, a test shall not be given, but the department, upon the receipt of the peace officer's certification, subject to penalty for perjury, that the officer had reasonable grounds to believe the person to have been operating a motor vehicle in violation of section 321J.2, that specified conditions existed for chemical testing pursuant to section 321J.8, and that the person refused to submit to the chemical testing, shall revoke the person's motor vehicle license and any nonresident operating privilege for a period of two hundred forty days if the person has no previous revocation within the previous six years under this chapter; and five hundred forty days if the person has one or more previous revocations within the previous six years under this chapter; or if the person is a resident without a license or permit to operate a motor vehicle in this state, the department shall deny to the person the issuance of a license or permit for the same period a license or permit would be revoked, subject to review as provided in this chapter. The effective date of revocation shall be twenty days after the department has mailed notice of revocation to the person by certified mail or, on behalf of the department, a peace officer offering or directing the administration of a chemical test may serve immediate notice of intention to revoke and of revocation on a person who refuses to permit chemical testing. If the peace officer serves that immediate notice, the peace officer shall take the Iowa license or permit of the driver, if any, and issue a temporary license effective for only twenty days. The peace officer shall immediately send the person's license to the department along with the officer's certificate indicating the person's refusal to submit to chemical testing.

Sec. 10. NEW SECTION. 321J.10 TESTS PURSUANT TO WARRANTS.

1. Refusal to consent to a test under section 321J.6 does not prohibit the withdrawal of a specimen for chemical testing pursuant to a search warrant issued in the investigation of a suspected violation of section 707.5 if all of the following grounds exist:

- a. A traffic accident has resulted in a death or personal injury reasonably likely to cause death.
- b. There are reasonable grounds to believe that one or more of the persons whose driving may have been the proximate cause of the accident was violating section 321J.2 at the time of the accident.

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

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

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

- b. The person applying for the warrant shall prepare a duplicate warrant and read the duplicate warrant, verbatim, to the magistrate who shall enter, verbatim, what is read to the

magistrate on a form that will be considered the original warrant. The magistrate may direct that the warrant be modified.

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

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

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

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

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

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

4. Search warrants issued under this section shall authorize and direct peace officers to secure the withdrawal of blood specimens by medical personnel under section 321J.11. Reasonable care shall be exercised to ensure the health and safety of the persons from whom specimens are withdrawn in execution of the warrants. If a person from whom a specimen is to be withdrawn objects to the withdrawal of blood, and the person is capable of giving a specimen of breath, and a direct breath testing instrument is readily available, the warrant may be executed by the withdrawal of a specimen of breath for chemical testing.

5. The act of any person knowingly resisting or obstructing the withdrawal of a specimen pursuant to a search warrant issued under this section constitutes a contempt punishable by a fine not exceeding one thousand dollars or imprisonment in a county jail not exceeding one year or by both such fine and imprisonment. Also, if the withdrawal of a specimen is so resisted or obstructed, sections 321J.9 and 321J.16 apply.

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

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

8. Subsections 1 to 7 of this section do not apply where a test may be administered under section 321J.7.

9. Medical personnel who use reasonable care and accepted medical practices in withdrawing blood specimens are immune from liability for their actions in complying with requests made of them pursuant to search warrants or pursuant to section 321J.11.

Sec. 11. NEW SECTION. 321J.11 TAKING SAMPLE FOR TEST.

Only a licensed physician, physician's assistant as defined in section 148C.1, subsection 6, medical technologist, or registered nurse, acting at the request of a peace officer, may withdraw a specimen of blood for the purpose of determining the alcohol concentration or the

presence of drugs. However, any peace officer, using devices and methods approved by the commissioner of public safety, may take a specimen of a person's breath or urine for the purpose of determining the alcohol concentration or the presence of drugs. Only new equipment kept under strictly sanitary and sterile conditions shall be used for drawing blood.

The person may have an independent chemical test or tests administered at the person's own expense in addition to any administered at the direction of a peace officer. The failure or inability of the person to obtain an independent chemical test or tests does not preclude the admission of evidence of the results of the test or tests administered at the direction of the peace officer. Upon the request of the person who is tested, the results of the test or tests administered at the direction of the peace officer shall be made available to the person.

Sec. 12. NEW SECTION. 321J.12 TEST RESULT REVOCATION.

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

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

If the peace officer serves that immediate notice, the peace officer shall take the person's Iowa license or permit, if any, and issue a temporary license valid only for twenty days. The peace officer shall immediately send the person's driver's license to the department along with the officer's certificate indicating that the test results indicated an alcohol concentration of .10 or more.

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

Sec. 13. NEW SECTION. 321J.13 HEARING ON REVOCATION — APPEAL.

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

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

- a. Whether the person refused to submit to the test or tests.
 - b. Whether a test was administered and the test results indicated an alcohol concentration as defined in section 321J.1 of .10 or more.
3. After the hearing the department shall order that the revocation be either rescinded or sustained. In the event that the revocation is sustained, the administrative hearing officer who conducted the hearing has authority to issue a temporary restricted license to the person whose motor vehicle license or operating privilege was revoked. Upon receipt of the decision of the department to sustain a revocation, the person contesting the revocation shall have ten days to file a request for review of the decision by the director. The director or the director's designee shall review the decision within fifteen days and shall either rescind or sustain the revocation or order a new hearing. If the director orders a new hearing, the department shall grant the person a new hearing within thirty days of the director's order.
4. A person whose motor vehicle license or operating privilege has been revoked under section 321J.9 or 321J.12 may reopen a department hearing on the revocation if the person submits a petition stating that new evidence has been discovered which provides grounds for rescission of the revocation, or if the person submits a petition stating that a criminal action on a charge of a violation of section 321J.2 filed as a result of the same circumstances which resulted in the revocation has resulted in a decision in which the court has held that the peace officer did not have reasonable grounds to believe that a violation of section 321J.2 had occurred to support a request for or to administer a chemical test or which has held the chemical test to be otherwise inadmissible or invalid. Such a decision by the court is binding on the department.
5. The department shall stay the revocation of a person's motor vehicle license or operating privilege for the period that the person is contesting the revocation under this section or section 321J.14 if it is shown to the satisfaction of the department that the new evidence is material and that there were valid reasons for failure to present it in the contested case proceeding before the department.
6. If the department fails to comply with the time limitations of this section regarding granting a hearing, review by the director or the director's designee, or granting a new hearing, and if the request for a hearing or review by the director was properly made under this section, the revocation of the motor vehicle license or operating privilege of the person who made the request for a hearing or review shall be rescinded. This subsection shall not apply in those cases in which a continuance to the hearing has been granted at the request of either the person who requested the hearing or the peace officer who requested or administered the chemical test.

Sec. 14. NEW SECTION. 321J.14 JUDICIAL REVIEW.

Judicial review of an action of the department may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A. Notwithstanding the terms of that chapter, a petition for judicial review may be filed in the district court in the county where the alleged events occurred or in the county in which the administrative hearing was held.

Sec. 15. NEW SECTION. 321J.15 EVIDENCE IN ANY ACTION.

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

Sec. 16. NEW SECTION. 321J.16 PROOF OF REFUSAL ADMISSIBLE.

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

Sec. 17. NEW SECTION. 321J.17 CIVIL PENALTY - SEPARATE FUND - REINSTATEMENT.

When the department revokes a person's motor vehicle license or nonresident operating privilege under this chapter, the department shall assess the person a civil penalty of one hundred dollars. The money collected by the department under this section shall be transmitted to the treasurer of state who shall deposit the money in a separate fund dedicated to and used for the purposes of chapter 912, and for the operation of a missing person clearinghouse and domestic abuse registry by the department of public safety. A temporary restricted license shall not be issued or a motor vehicle license or nonresident operating privilege reinstated until the civil penalty has been paid.

Sec. 18. NEW SECTION. 321J.18 OTHER EVIDENCE.

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

Sec. 19. NEW SECTION. 321J.19 INFORMATION RELAYED TO OTHER STATES.

When it has been finally determined under this chapter that a nonresident's privilege to operate a motor vehicle in this state has been revoked or denied, the department shall give information in writing of the action taken to the official in charge of traffic control or public safety of the state of the person's residence and of any state in which the person has a license.

Sec. 20. NEW SECTION. 321J.20 TEMPORARY RESTRICTED LICENSE.

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

a. The person's motor vehicle license is revoked under section 321J.4, subsection 1, 2, 4, or 6.

b. The person's motor vehicle license is revoked under section 321J.9 and the person has entered a plea of guilty on a charge of a violation of section 321J.2 which arose from the same set of circumstances which resulted in the person's motor vehicle license revocation under section 321J.9 and the guilty plea is not withdrawn at the time of or after application for the temporary restricted license.

c. The person's motor vehicle license is revoked under section 321J.12.

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

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

3. A person holding a temporary restricted license issued by the department under this section shall not operate a motor vehicle for pleasure.

Sec. 21. NEW SECTION. 321J.21 DRIVING WHILE LICENSE DENIED OR REVOKED.

A person whose motor vehicle license or nonresident operating privilege has been denied or revoked as provided in this chapter and who drives a motor vehicle upon the highways of this state while the license or privilege is denied or revoked commits a serious misdemeanor. The department, upon receiving the record of the conviction of a person under this section upon a charge of driving a motor vehicle while the license of the person was revoked or denied, shall extend the period of revocation or denial for an additional like period, and the department shall not issue a new license during the additional period.

Sec. 22. NEW SECTION. 321J.22 COURT-ORDERED DRINKING DRIVERS COURSE.

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

a. "Course for drinking drivers" means an approved course designed to inform the offender about drinking and driving and encourage the offender to assess the offender's own drinking and driving behavior in order to select practical alternatives.

b. "Satisfactory completion of a course" means receiving at the completion of a course a grade from the course instructor of "C" or "2.0," or better.

2. After a conviction for, or a plea of guilty of, a violation of section 321J.2, the court in addition to its power to commit the defendant for treatment of alcoholism under section 321J.3, may order the defendant, at the defendant's own expense, to enroll in, attend, and successfully complete a course for drinking drivers. The court may alternatively or additionally require the defendant to seek evaluation, treatment or rehabilitation services under section 125.33 at the defendant's expense and to furnish evidence of successful completion. A copy of the order shall be forwarded to the department.

3. The course provided in this section shall be offered on a regular basis at each area school as defined in section 280A.2. Enrollment in the courses is not limited to persons ordered to enroll, attend and successfully complete the course under subsection 2, and any person convicted of a violation of section 321J.2 who was not ordered to enroll in a course may enroll in and attend a course for drinking drivers. The course required by this section shall be taught by the area schools under the department of public instruction and approved by the department. The department of public instruction shall establish reasonable fees to defray the expense of obtaining classroom space, instructor salaries, and class materials. A person shall not be denied enrollment in a course by reason of the person's indigency.

4. An employer shall not discharge a person from employment solely for the reason of work absence to attend a course required by this section. Any employer who violates this section is liable for damages which include but are not limited to actual damages, court costs, and reasonable attorney fees. The person may also petition the court for imposition of a cease and desist order against the person's employer and for reinstatement to the person's previous position of employment.

5. The department of public instruction shall prepare a list of the locations of the courses taught under this section, the dates and times taught, the procedure for enrollment, and the schedule of course fees. The list shall be kept current and a copy of the list shall be sent to each court having jurisdiction over offenses provided in this chapter.

6. The department of public instruction shall maintain enrollment, attendance, successful and unsuccessful completion data on the persons ordered to enroll, attend and successfully complete a course for drinking drivers. This data shall be forwarded to the court.

Sec. 23. NEW SECTION. ROADBLOCKS CONDUCTED BY LAW ENFORCEMENT AGENCIES.

1. The law enforcement agencies of this state may conduct emergency vehicle roadblocks in response to immediate threats to the health, safety, and welfare of the public; and otherwise may conduct routine vehicle roadblocks only as provided in this section. Routine vehicle roadblocks may be conducted to enforce compliance with the law regarding any of the following:

a. The licensing of operators of motor vehicles.

- b. The registration of motor vehicles.
- c. The safety equipment required on motor vehicles.
- d. The provisions of chapters 109 and 110.

2. Any routine vehicle roadblock conducted under this section shall meet the following requirements:

a. The location of the roadblock, the time during which the roadblock will be conducted, and the procedure to be used while conducting the roadblock, shall be determined by policymaking administrative officers of the law enforcement agency.

b. The roadblock location shall be selected for its safety and visibility to oncoming motorists, and adequate advance warning signs, illuminated at night or under conditions of poor visibility, shall be erected to provide timely information to approaching motorists of the roadblock and its nature.

c. There shall be uniformed officers and marked official vehicles of the law enforcement agency or agencies involved, in sufficient quantity and visibility to demonstrate the official nature of the roadblock.

d. The selection of motor vehicles to be stopped shall not be arbitrary.

e. The roadblock shall be conducted to assure the safety of and to minimize the inconvenience of the motorists involved.

Sec. 24. NEW SECTION. 123.151 POSTING NOTICE ON DRUNK DRIVING LAWS REQUIRED.

State liquor stores and holders of liquor control licenses, wine permits, or beer permits shall post in a prominent place in the state liquor stores or licensed premises notice explaining the operation of and penalties of the laws which prohibit the operation of a motor vehicle by a person who is intoxicated. The size, print size, location, and content of the notice shall be established by rule of the department.

Sec. 25. Section 125.44, unnumbered paragraph 6, Code 1985, is amended to read as follows:

The department is liable for the cost of care, treatment, and maintenance of a substance abuser admitted to the facility voluntarily or pursuant to section 125.75, 125.81, or 125.91 or section ~~321.281, 321.282, subsection 3, 321J.3~~ or 204.409, subsection 2 only to those facilities that have a contract with the department under this section, only for the amount computed according to and within the limits of liability prescribed by this section, and only when the substance abuser is unable to pay the costs and there is no other person, firm, corporation or insurance company bound to pay the costs.

Sec. 26. NEW SECTION. 217A.30 ASSIGNMENT TO TREATMENT FACILITIES.

1. The director of the department of corrections may assign an offender committed to the custody of the director for a felony violation of chapter 321J to a facility which meets all of the following requirements:

a. Is a treatment facility meeting the licensure standards of the division of substance abuse of the department of public health.

b. Is a facility meeting applicable standards of the American corrections association.

c. Is a facility which meets any other rule or requirement adopted by the department pursuant to chapter 17A.

2. The assignment of an offender pursuant to subsection 1 shall be for purposes of substance abuse treatment and education, and may include work programs for the offender at times when the offender is not in substance abuse treatment or education.

3. Offenders assigned to a facility pursuant to this section shall not be included in calculations used to determine the existence of a prison overcrowding state of emergency.

4. The director shall prepare proposed administrative rules for the consideration of the administrative rules review committee for the funding of the program by means of self contribution by the offenders, insurance reimbursement on behalf of offenders, or other forms of

funding, program structure, criteria for the evaluation of facilities and offenders for participation in the programs, and all other issues the director shall deem appropriate. Proposed rules prepared pursuant to this subsection shall be submitted to the administrative rules review committee on or before September 15, 1986.

Sec. 27. Section 307.27, subsection 5, Code 1985, is amended to read as follows:

5. Administer the provisions of chapters 321A, ~~321B~~, 321E, and 321F, and 321J relating to motor vehicle financial responsibility, the implied consent law, the movement of vehicles of excessive size and weight and the leasing and renting of vehicles.

Sec. 28. Section 321.178, subsection 1, unnumbered paragraph 1, Code 1985, is amended to read as follows:

An approved driver education course as programmed by the department of public instruction shall consist of at least thirty clock hours of classroom instruction, and six or more clock hours of laboratory instruction of which at least three clock hours shall consist of street or highway driving. An approved course shall include a minimum of two hours of classroom instruction concerning substance abuse as part of its curriculum. After the student has completed three clock hours of street or highway driving and has demonstrated to the instructor an ability to properly operate a motor vehicle and upon written request of a parent or guardian, the instructor may waive the remaining required laboratory instruction.

Sec. 29. Section 321.191, unnumbered paragraph 2, Code 1985, is amended to read as follows:

There shall be a fee of twenty dollars for reinstatement of a chauffeur's license or operator's license which is, after notice and opportunity for hearing, suspended or revoked pursuant to sections 321.193, 321.209 and 321.210, except subsection 4 thereof, 321.513, 321.560, 321A.6, and chapter ~~321B~~ 321J. The twenty-dollar fee shall be collected only if the person whose license was suspended or revoked was served personally with notice. If the person whose license was suspended or revoked was served notice by certified mail, the reinstatement fee shall be ten dollars.

Sec. 30. Section 321.196, Code Supplement 1985, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Prior to the renewal of a license pursuant to this section, the department shall issue to each applicant information on the law relating to the operation of a motor vehicle while intoxicated and statistical information relating to the number of injuries and fatalities occurring as a result of the operation of motor vehicles while intoxicated.

Sec. 31. Section 321.209, subsection 2, Code 1985, is amended by striking the subsection.

Sec. 32. Section 321.210, Code 1985, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The department shall not consider or assess any points for speeding violations of ten miles per hour or less over the legal speed limit in speed zones that have a legal speed limit greater than thirty-five miles per hour in determining a license suspension under this section. This paragraph shall apply to only the first two such violations which occur within any twelve-month period.

Sec. 33. Section 321.213, Code 1985, is amended to read as follows:

321.213 LICENSE SUSPENSIONS OR REVOCATIONS DUE TO VIOLATIONS BY JUVENILE DRIVERS.

Upon the entering of an order at the conclusion of an adjudicatory hearing under section 232.47 that the child violated a provision of this chapter or chapter 321A or chapter 321J for which the penalty is greater than a simple misdemeanor, ~~or that the child refused to submit to~~

chemical testing under section ~~321B-4~~, the clerk of the juvenile court in the adjudicatory hearing shall forward a copy of the adjudication to the department. Notwithstanding section 232.55, a final adjudication in a juvenile court that the child violated a provision of this chapter or chapter 321A or chapter 321J constitutes a final conviction of a violation of a provision of this chapter or chapter 321A or chapter 321J for purposes of section 321.189, subsection 2, paragraph "b", and sections 321.193, 321.194, 321.200, 321.209, 321.210, 321.215, and 321A.17. Notwithstanding section 232.55, the director shall revoke the license or permit of a child under section 321B.13 upon receipt of a copy of the final adjudication in a juvenile court that the child refused to submit to chemical testing under section ~~321B-4~~.

Sec. 34. Section 321.218, unnumbered paragraph 1, Code Supplement 1985, is amended to read as follows:

A person whose operator's or chauffeur's license or driving privilege has been denied, canceled, suspended or revoked as provided in this chapter, and who drives a motor vehicle upon the highways of this state while the license or privilege is denied, canceled, suspended, or revoked commits a simple misdemeanor. However, a person whose license or driving privilege has been revoked under section 321.209 or ~~chapter 321B~~ and who drives a motor vehicle upon the highways of this state while the license or privilege is revoked commits a serious misdemeanor. The sentence imposed under this section shall not be suspended by the court, notwithstanding section 907.3 or any other statute. The department, upon receiving the record of the conviction of a person under this section upon a charge of driving a motor vehicle while the license of the person was suspended or revoked, shall, except for licenses suspended under section 321.513, extend the period of suspension or revocation for an additional like period, and the department shall not issue a new license during the additional period.

Sec. 35. Section 321.228, subsection 2, Code 1985, is amended to read as follows:

2. The provisions of sections 321.261 to 321.274, ~~section and sections 321.277 and sections 321.280 to 321.282~~ shall apply upon highways and elsewhere throughout the state.

Sec. 36. Section 321.283, unnumbered paragraph 1, Code Supplement 1985, is amended to read as follows:

This chapter, except ~~section sections 321.277 and sections 321.280 to 321.282~~ does not apply to persons and motor vehicles and other equipment while actually engaged in work upon the surface of a highway officially closed to traffic but does apply to such persons and vehicles when traveling to or from such work. The minimum speed restriction of section 321.285, subsection 8, and the provisions of sections 321.297 and 321.298 do not apply to road workers operating maintenance equipment owned by or under lease to any state or local authority while engaged in road maintenance, road blading, snow and ice control and removal, and granular resurfacing work on a highway, whether or not the highway is closed to traffic.

Sec. 37. Section 321.555, subsection 1, paragraph b, Code 1985, is amended to read as follows:

b. Operating a motor vehicle in violation of section ~~321.281~~ 321J.2.

Sec. 38. Section 321A.17, subsection 1, Code 1985, is amended to read as follows:

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

Sec. 39. Section 331.653, subsection 33, Code Supplement 1985, is amended to read as follows:

33. Carry out duties relating to the enforcement of laws prohibiting the operation of a motor vehicle while under the influence of an alcoholic beverage as provided in chapter ~~321B~~ 321J.

Sec. 40. Section 602.8102, subsection 51, Code Supplement 1985, is amended to read as follows:

51. Forward to the department of transportation a copy of the record of each conviction or forfeiture of bail of a person charged with the violation of the laws regulating the operation of vehicles on public roads as provided in sections ~~321.281~~ 321J.2 and 321.491.

Sec. 41. NEW SECTION. 707.6A HOMICIDE BY VEHICLE.

1. A person commits a class "D" felony when the person unintentionally causes the death of another by either of the following means:

a. Operating a motor vehicle while under the influence of alcohol or a drug or a combination of such substances or while having an alcohol concentration of .10 or more, in violation of section 321J.2.

b. Driving a motor vehicle in a reckless manner with willful or wanton disregard for the safety of persons or property, in violation of section 321.277.

2. A person commits an aggravated misdemeanor when the person unintentionally causes the death of another by operating a motor vehicle in any of the following manners:

a. Drag racing, in violation of section 321.278.

b. Eluding or attempting to elude a pursuing law enforcement vehicle, in violation of section 321.279.

3. As used in this section, "motor vehicle" includes any vehicle defined as a motor vehicle in section 321.1.

Sec. 42. Section 804.31, unnumbered paragraph 2, Code Supplement 1985, is amended to read as follows:

This section does not prohibit the request for and administration of a preliminary breath screening test or the request for and administration of a chemical test of a body substance or substances under chapter ~~321B~~ 321J prior to the arrival of a qualified interpreter for a hearing impaired person who is believed to have committed a violation of section ~~321.281~~ 321J.2. However, upon the arrival of the interpreter the officer who requested the chemical test shall explain through the interpreter the reason for the testing, the consequences of the person's consent or refusal, and the ramifications of the results of the test, if one was administered.

Sec. 43. Section 902.3, Code 1985, is amended to read as follows:

902.3 INDETERMINATE SENTENCE.

When a judgment of conviction of a felony, other than a class "A" felony is entered against a person, the court, in imposing a sentence of confinement, shall commit the person into the custody of the director of the Iowa department of corrections for an indeterminate term, the maximum length of which shall not exceed the limits as fixed by section 707.3 or section 902.9 nor shall the term be less than the minimum term imposed by law, if a minimum sentence is provided. However, the court may sentence a person convicted of a class "D" felony for a violation of section 321J.2 to imprisonment for up to one year in a county jail under section 902.9, subsection 4, and the person shall not be under the custody of the director of the Iowa department of corrections.

Sec. 44. Section 902.9, subsection 4, Code 1985, is amended to read as follows:

4. A class "D" felon, not an habitual offender, shall be confined for no more than five years, and in addition may be sentenced to a fine of not more than seven thousand five hundred dollars. A class "D" felon, such felony being for a violation of section 321J.2, may be sentenced to imprisonment for up to one year in the county jail.

Sec. 45. Section 907.3, subsection 1, paragraph g, Code 1985, is amended to read as follows:
 g. The offense is a violation of section ~~321.281~~ 321J.2 and, within the previous six years, the person has been convicted of a violation of that section or the person's driver's license has been revoked pursuant to that section or chapter ~~321B~~ section 321J.4, 321J.9, or 321J.12.

Sec. 46. Section 912.1, subsection 4, Code 1985, is amended to read as follows:
 4. "Crime" means conduct that occurs or is attempted in this state, poses a substantial threat of personal injury or death, and is punishable as a felony, an aggravated misdemeanor, or a serious misdemeanor, or would be so punishable but for the fact that the person engaging in the conduct lacked the capacity to commit the crime under the laws of this state. "Crime" does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle, motorcycle, motorized bicycle, train, boat, or aircraft except for violations of section ~~321.281~~ 321J.2 or when the intention is to cause personal injury or death. A plea or verdict of guilty of a charge under section ~~321.281~~ 321J.2 or a license revocation under section ~~321B.13~~ 321J.9 or ~~321B.16~~ 321J.12 shall be considered by the department as evidence of a violation of section ~~321.281~~ 321J.2 for the purposes of this chapter.

Sec. 47. Section 321.281, Code Supplement 1985, is repealed.

Sec. 48. Section 321.282, Code 1985, is repealed.

Sec. 49. Section 321.283, Code Supplement 1985, is repealed.

Sec. 50. Chapter 321B, Code 1985 and Code Supplement 1985, is repealed.

Sec. 51. References in chapter 321J to actions which occurred previously under "this chapter" or "this section" include the preceding Code chapter or section which covers the same or substantially similar actions.

Sec. 52. This Act applies to any judicial or administrative action which arises due to violation of a section of this Act or an implementing rule, and which occurs after the effective date of this Act. This Act also applies to any judicial or administrative action which arose prior to the effective date of this Act due to a violation of a preceding Code section or implementing rule which was the same or substantially similar to a section in this Act, or an implementing rule if the defendant or defendant's counsel requests that the action proceed under this Act.

Approved May 27, 1986

CHAPTER 1221
LEGAL DRINKING AGE
S.F. 97

AN ACT establishing the legal age for the purpose of laws relating to beer and alcoholic beverages at twenty-one years.

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

Section 1. Chapter 123, Code 1985, is amended by adding the following new section:
NEW SECTION. 123.47A PERSONS AGE NINETEEN AND TWENTY.

A person shall not sell, give, or otherwise supply alcoholic liquor, wine, or beer to any person knowing or having reasonable cause to believe that the person is age nineteen or twenty. A person age nineteen or twenty shall not purchase or possess alcoholic liquor, wine, or beer. However, a person age nineteen or twenty may possess alcoholic liquor, wine, or beer given to the person within a private home with the knowledge and consent of the person's parent or guardian, and a person age nineteen or twenty may handle alcoholic liquor, wine, and