

FEB 01 1995

JUDICIARY

HOUSE FILE 119

BY BODDICKER

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

A BILL FOR

1 An Act to provide for the impoundment or immobilization and
 2 forfeiture of motor vehicles driven or owned by persons
 3 convicted of operating while intoxicated and being a second or
 4 subsequent offender.

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

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HF 119

1 Section 1. Section 321J.4A, Code 1995, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 321J.4A MOTOR VEHICLE IMPOUNDMENT OR IMMOBILIZATION.

5 1. If a person is convicted of a second or subsequent
6 offense of operating while intoxicated, the court shall order
7 that any motor vehicles owned by the person and any motor
8 vehicles operated by the person be impounded or immobilized.

9 2. The order shall specify all of the following:

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

11 b. The period of impoundment or immobilization.

12 c. The place at which the motor vehicles are to be
13 impounded or immobilized.

14 d. The person or agency who is to be responsible for
15 carrying out the order requiring impoundment or immobilization
16 of the motor vehicle. If a vehicle which is to be impounded
17 or immobilized is in the custody of a law enforcement agency,
18 the court shall designate that agency as the responsible
19 agency. If the vehicle is not in the custody of a law
20 enforcement agency, the person or agency responsible for
21 carrying out the order shall be any person deemed appropriate
22 by the court, including but not limited to a law enforcement
23 agency with jurisdiction over the area in which the residence
24 of the convicted person is located.

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

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

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

8 6. If the vehicle is located at a place other than the
9 place specified in the order as the place at which the
10 impoundment or immobilization is to be carried out, the person
11 or agency responsible for executing the order shall arrange
12 for the vehicle to be moved to the place specified in the
13 order as the place of impoundment or immobilization. When the
14 vehicle is found, is impounded or immobilized, and is at the
15 place specified in the order as the place of impoundment or
16 immobilization, the person or agency responsible for executing
17 the order shall notify the clerk of the date on which the
18 order was executed. The clerk shall notify the department of
19 the date on which the order was executed.

20 7. The department shall destroy license plates received
21 under this section.

22 8. Except where the person, who is convicted of operating
23 while intoxicated and being a second or subsequent offender,
24 is not lawfully in possession of the motor vehicle, the owner
25 of any motor vehicle that is impounded or immobilized under
26 this section shall be assessed a fee of one hundred dollars
27 plus the cost of any expenses for storage of the motor
28 vehicle, to be paid to the clerk of the district court. Upon
29 payment of the fee and costs, the clerk shall forward a copy
30 of the receipt to the department.

31 9. If a law enforcement agency impounds or immobilizes a
32 motor vehicle, the amount of the fee and expenses deposited
33 with the clerk shall be paid by the clerk to the law
34 enforcement agency responsible for executing the order to
35 reimburse the agency for costs incurred for impoundment or

1 immobilization equipment and, if required, in sending officers
2 to search for and locate the vehicle specified in the
3 impoundment or immobilization order.

4 10. A motor vehicle, which is subject to an order of
5 impoundment or immobilization, shall be forfeited to the state
6 under chapter 809 and the proceeds shall be forwarded to the
7 clerk of the district court for purposes of defraying the
8 costs of prosecution of the defendant. Any unexpended funds
9 remaining after payment of the costs of prosecution shall be
10 forwarded to the appropriate law enforcement or corrections
11 agency for purposes of defraying the costs resulting from any
12 incarceration of the defendant.

13 11. The title of the motor vehicle which is subject to an
14 order of impoundment or immobilization shall not be sold or
15 transferred by the person convicted of the offense of
16 operating while intoxicated, which resulted in the issuance of
17 the order of impoundment or immobilization. If, during the
18 period of impoundment or immobilization, the title to the
19 motor vehicle which is the subject of the order is transferred
20 by the foreclosure of a chattel mortgage, a sale upon
21 execution, the cancellation of a conditional sales contract,
22 or an order of a court, the court which enters the order that
23 permits transfer of the title shall notify the department of
24 the transfer of the title. The department shall enter notice
25 of the transfer of the title to the motor vehicle in the
26 previous owner's vehicle registration record.

27 12. Notwithstanding the requirements of this section, if
28 the owner of the motor vehicle is not the person who is
29 convicted of the offense which resulted in the issuance of the
30 order of impoundment or immobilization, the owner or the
31 owner's designee shall be permitted to submit a claim for
32 return of the motor vehicle within twenty-four hours from
33 receipt of the order for impoundment or immobilization. The
34 vehicle shall be returned to the owner, or owner's designee,
35 and the order for impoundment or immobilization shall be

1 rescinded with respect to the particular motor vehicle, if the
2 owner or owner's designee can prove to the satisfaction of the
3 court that the owner did not know or should not have known
4 that the vehicle was to be used in the commission of the
5 offense of operating while intoxicated and being a second or
6 subsequent offender. For purposes of this section, unless the
7 person convicted of the offense which results in the
8 imposition of the order for impoundment or immobilization is
9 not in lawful possession of the motor vehicle used in the
10 commission of the offense, an owner of a motor vehicle shall
11 be presumed to know of any operating while intoxicated
12 convictions, which occurred within the previous six years, of
13 a person who uses the owner's motor vehicle.

14 Sec. 2. Section 809.1, subsection 4, Code 1995, is amended
15 to read as follows:

16 4. The Except as otherwise provided in section 321J.4A,
17 the definitions contained in subsections 1 through 3 shall not
18 apply to violations of chapter 321 or 321J.

19 Sec. 3. STATE MANDATE. The funds generated by the
20 forfeiture of automobiles under this Act are payment of the
21 costs of any additional duties imposed under this bill for
22 purposes of section 25B.2, subsection 3.

23 EXPLANATION

24 This bill provides, upon the conviction of a person of
25 operating while intoxicated and being a second or subsequent
26 offender (OWI 2nd), for the impoundment or immobilization and
27 forfeiture of motor vehicles that are either owned or used by
28 the person to commit the offense. With the exception of the
29 situation in which the person convicted of OWI 2nd is not in
30 lawful possession of the motor vehicle, owners of motor
31 vehicles which are the subject of orders for impoundment or
32 immobilization must pay a fee of \$100 plus expenses to cover
33 the cost of impoundment or immobilization. Motor vehicles
34 which are impounded or immobilized will be forfeited to the
35 state. An owner, who is not the person convicted of the

1 offense of OWI 2nd, and who either did not know or should not
2 have known that the vehicle was to be used in the commission
3 of the offense has the opportunity to obtain the release of
4 the vehicle if the owner can prove that they did not know or
5 should not have known about the offense. The bill establishes
6 a presumption that owners have knowledge of convictions that
7 occurred within the previous six years of persons who use
8 their motor vehicles, with the exception of those persons who
9 unlawfully obtain possession of the motor vehicle.

10 This bill may include a state mandate as defined in section
11 25B.3. However, funds generated under the bill are considered
12 to be payment of the costs of any additional duties imposed
13 under the bill.

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