

2/27/96 Referred to Transportation

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JUDICIARY

HOUSE FILE 2267
BY WITT, KLEMME, NELSON of
Marshall, and HARPER

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

A BILL FOR

1 An Act providing for the impoundment of motor vehicles driven by
2 persons whose licenses are suspended, denied, revoked, or
3 barred for an operating while intoxicated offense, providing
4 for civil liability by the vehicle owner for damages caused by
5 the vehicle operator, and providing for a hearing procedure
6 for recovery of the vehicle in question.

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

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HF 2267

1 Section 1. Section 321J.4B, Code Supplement 1995, is
2 amended to read as follows:

3 321J.4B MOTOR VEHICLE IMPOUNDMENT OR IMMOBILIZATION --
4 PENALTY -- LIABILITY OF VEHICLE OWNER.

5 1. For purposes of this section:

6 a. "Immobilized" means the installation of a device in a
7 motor vehicle that completely prevents a motor vehicle from
8 being operated, or the installation of an ignition interlock
9 device of a type approved by the commissioner of public
10 safety.

11 b. "Impoundment" means the process of seizure and
12 confinement within an enclosed area of a motor vehicle, for
13 the purpose of restricting access to the vehicle.

14 c. "Owner" means the registered titleholder of a motor
15 vehicle; except in the case where a rental or leasing agency
16 is the registered titleholder, in which case the lessee of the
17 vehicle shall be treated as the owner of the vehicle for
18 purposes of this section.

19 2. A motor vehicle is subject to impoundment in the
20 following circumstances:

21 a. If a person ~~is convicted of a~~ operates a vehicle in
22 violation of section 321J.2, and that vehicle operation
23 results in that person's second, third, or subsequent offense
24 ~~of operating while intoxicated, the court shall order that any~~
25 ~~motor vehicles owned by the person and used to commit the~~
26 ~~offense and any other motor vehicle used~~ under section 321J.2.

27 b. If a person operates a vehicle while that person's
28 motor vehicle license or operating privilege has been
29 suspended, denied, revoked, or barred due to a violation of
30 section 321J.2.

31 3. The motor vehicle operated by the person in the
32 commission of the any offense listed in subsection 2 shall be
33 immediately impounded or immobilized in accordance with this
34 section. ~~For purposes of this section, "immobilized" means~~
35 ~~the installation of a device that completely prevents a motor~~

1 ~~vehicle from being operated, or the installation of an~~
2 ~~ignition interlock device, of a type approved by the~~
3 ~~commissioner of public safety, in a motor vehicle.~~

4 a. A person or agency taking possession of an impounded
5 motor vehicle shall:

6 (1) Make a written inventory of any property contained in
7 the vehicle, and include the date and time of the inventory,
8 the name of the person taking custody of the property, and the
9 agency responsible for the motor vehicle and for the property.
10 The agency responsible for the motor vehicle shall deliver a
11 copy of the inventory to the operator of the vehicle, the
12 owner of the vehicle, and the county attorney.

13 (2) Contact all rental or leasing agencies registered as
14 owners of the vehicle, as well as any parties registered as
15 holders of a secured interest in the vehicle, in accordance
16 with subsection 13.

17 b. The county attorney shall file a copy of the inventory,
18 along with a list of the names and addresses of the persons
19 who were provided with copies of the inventory, with the
20 district court as part of the file related to the applications
21 for return of the vehicle.

22 4. An owner of a motor vehicle impounded or immobilized
23 under this section, who knows of, should have known of, or
24 gives consent to the operation of, the motor vehicle in
25 violation of subsection 2, shall be jointly and severally
26 liable for any damage caused by the person who operated the
27 motor vehicle, subject to the provisions of chapter 668.

28 5. a. Any person claiming the right to immediate
29 possession of the impounded vehicle may make application for
30 the vehicle's return in the office of the clerk of the
31 district court for the county in which the property was
32 seized. The application shall state the nature of the
33 claimant's interest and the grounds upon which the claimant
34 seeks to have the property immediately returned. If no
35 grounds are set out in the application for a return, the court

1 may enter judgment on the pleadings without further hearing.

2 b. An application for the return of the motor vehicle
3 shall be set for hearing not less than five nor more than
4 thirty days after the filing of the application and shall be
5 tried to the court. All claims to the same motor vehicle
6 shall be heard in one proceeding unless it is shown that the
7 proceeding would result in prejudice to one or more parties.

8 c. If the total value of the motor vehicle sought to be
9 returned is less than ten thousand dollars, the proceeding may
10 be conducted by a magistrate or a district associate judge,
11 and appeals are to be conducted under the same procedures
12 applicable to appeals of small claims. In all other cases,
13 the hearing shall be conducted by a district judge. Appeals
14 from judgments entered by a district judge shall be made
15 within thirty days after the entry of a judgment order. The
16 motor vehicle shall remain in impoundment during the course of
17 the appeal, unless released in accordance with this section.

18 d. The following persons shall be entitled to immediate
19 return of the motor vehicle without payment of costs
20 associated with seizure or impoundment of the vehicle:

21 (1) The owner of the motor vehicle, if the person is not
22 the same person as the person who operated the motor vehicle
23 and the motor vehicle was operated without the owner's
24 knowledge or consent, either express or implied.

25 (2) A motor vehicle rental or leasing agency, if the
26 agency did not or could not have known that the person
27 operating the motor vehicle did not have a valid motor vehicle
28 license or operating privileges, and the operation of the
29 motor vehicle in the manner asserted constitutes a violation
30 of the rental or leasing agreement.

31 (3) A person who owns the motor vehicle and who is charged
32 but is not convicted of the violation of section 321.218,
33 321.561, 321A.32, or 321J.21, which resulted in the seizure
34 and impoundment of the motor vehicle under this section.

35 e. A person who owns a motor vehicle which has been seized

1 and impounded under this chapter who knew or should have
2 known, or who gave consent to the operation of the motor
3 vehicle by the person whose motor vehicle license was
4 suspended or revoked, shall be entitled to the return of the
5 motor vehicle upon payment of the costs, as well as the costs
6 of the hearing on the application, which are associated with
7 the seizure and impoundment of the motor vehicle.

8 f. A person who owns a motor vehicle which has been seized
9 and impounded under this chapter who has been convicted of a
10 violation of section 321.218, 321.561, 321A.32, or 321J.21
11 shall be entitled to the return of the motor vehicle upon
12 expiration of the period of revocation or suspension and upon
13 payment of the costs, as well as the costs of the hearing on
14 the application, which are associated with the seizure and
15 impoundment of the motor vehicle.

16 2- g. The A court order issued after a hearing held under
17 this subsection requiring continued impoundment or
18 immobilization shall specify all of the following:

19 a- (1) The motor vehicles that are subject to the order.

20 b- (2) The period of impoundment or immobilization.

21 c- (3) The person or agency responsible for carrying out
22 the order requiring impoundment or immobilization of the motor
23 vehicle.

24 h. If a the vehicle which-is-to-be-impounded-or
25 immobilized subject to the order is in the custody of a law
26 enforcement agency, the court shall designate that agency as
27 the responsible agency. If the vehicle is not in the custody
28 of a law enforcement agency, the person or agency responsible
29 for carrying out the order shall be any person deemed
30 appropriate by the court, including but not limited to a law
31 enforcement agency with jurisdiction over the area in which
32 the residence of the vehicle owner is located. The person or
33 agency responsible for carrying out the order shall determine
34 whether the motor vehicle shall be impounded or immobilized.

35 3- i. The period of impoundment or immobilization of a

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

7 ~~4.~~ j. The clerk of the district court shall send a copy of
8 the order to the department, the person convicted of the
9 offense, the motor vehicle owner if the owner is not the
10 person convicted, and the person or agency responsible for
11 executing the order for impoundment or immobilization, and any
12 holders of any security interests in the vehicle.

13 ~~5.~~ 6. a. If the vehicle ~~to-be-impounded-or-immobilized~~
14 subject to the court order is in the custody of a law
15 enforcement agency, the agency shall immobilize or impound the
16 vehicle upon receipt of the order, seize the motor vehicle's
17 license plates and registration, and shall send or deliver the
18 vehicle's license plates and registration to the department.

19 ~~6.~~ b. If the vehicle ~~to-be-impounded-or-immobilized~~
20 subject to the court order is not in the custody of a law
21 enforcement agency, the person or agency designated in the
22 order as the person or agency responsible for executing the
23 order shall, upon receipt of the order, promptly locate the
24 vehicle specified in the order, seize the motor vehicle and
25 the license plates, and send or deliver the vehicle's license
26 plates to the department.

27 ~~7.~~ c. If the vehicle is located at a place other than the
28 place at which the ~~impoundment-or-immobilization~~ court order
29 is to be carried out, the person or agency responsible for
30 executing the order shall arrange for the vehicle to be moved
31 to the place of impoundment or immobilization. When the
32 vehicle is found, is impounded or immobilized, and is at the
33 place of impoundment or immobilization, the person or agency
34 responsible for executing the order shall notify the clerk of
35 the date on which the order was executed. The clerk shall

1 notify the department of the date on which the order was
2 executed.

3 d. A person or agency taking possession of a motor vehicle
4 under a court order for impoundment or immobilization shall:

5 (1) Make a written inventory of any property contained in
6 the vehicle, and include the date and time of the inventory,
7 the name of the person taking custody of the property, and the
8 agency responsible for the motor vehicle and for the property.
9 The agency responsible for the motor vehicle shall deliver a
10 copy of the inventory to the operator of the vehicle, the
11 owner of the vehicle, and the county attorney.

12 (2) Contact all rental or leasing agencies registered as
13 owners of the vehicle, as well as any parties registered as
14 holders of a secured interest in the vehicle, in accordance
15 with subsection 13.

16 ~~8- 7.~~ Upon receipt of the court order ~~for-impoundment-or~~
17 ~~immobilization-and-seizure-of-the-motor-vehicle,~~ if the agency
18 responsible for carrying out the order determines that the
19 motor vehicle is to be impounded, the agency shall review the
20 value of the vehicle in relation to the costs associated with
21 the period of impoundment of the motor vehicle specified in
22 the order. If the agency determines that the costs of
23 impoundment of the motor vehicle exceed the actual wholesale
24 value of the motor vehicle, the agency may treat the vehicle
25 as an abandoned vehicle pursuant to section 321.89. If the
26 agency elects to treat the motor vehicle as abandoned, the
27 agency shall notify the registered owner of the motor vehicle
28 that the vehicle shall be deemed abandoned and shall be sold
29 in the manner provided in section 321.89 if payment of the
30 total cost of impoundment is not received within twenty-one
31 days of the mailing of the notice. The agency shall provide
32 documentation regarding the valuation of the vehicle and the
33 costs of impoundment. This paragraph shall not apply to
34 vehicles that are immobilized pursuant to this section or if
35 ~~subsection 15-or-16~~ 13, paragraph "a" or "b" applies.

1 9- 8. The department shall destroy license plates received
2 under this section and shall not authorize the release of the
3 vehicle or the issuance of new license plates for the vehicle
4 until the period of impoundment or immobilization has expired,
5 and the fee and costs assessed under subsection ~~10~~ 9 have been
6 paid. The fee for issuance of new license plates and
7 certificates of registration shall be the same as for the
8 replacement of lost, mutilated, or destroyed license plates
9 and certificates of registration.

10 ~~10- 9. a. Except where the person who is convicted of~~
11 ~~operating while intoxicated and being a second or subsequent~~
12 ~~offender is not lawfully in possession of the motor vehicle,~~
13 the The owner and operator of any motor vehicle that is
14 impounded or immobilized under this section shall be assessed
15 a fee of one hundred dollars plus the cost of any expenses for
16 towing, storage, and any other costs of impounding or
17 immobilizing the motor vehicle, to be paid to the clerk of the
18 district court, except as otherwise provided in this section.
19 The person or agency responsible for carrying out the order
20 shall inform the court of the costs of towing, storage, and
21 any other costs of impounding or immobilizing the motor
22 vehicle. Upon payment of the fee and costs, the clerk shall
23 forward a copy of the receipt to the department.

24 ~~11- b.~~ If a law enforcement agency impounds or immobilizes
25 a motor vehicle, the amount of the fee and expenses deposited
26 with the clerk shall be paid by the clerk to the law
27 enforcement agency responsible for executing the order to
28 reimburse the agency for costs incurred for impoundment or
29 immobilization equipment and, if required, in sending officers
30 to search for and locate the vehicle specified in the
31 impoundment or immobilization order.

32 ~~12- 10.~~ Operating a motor vehicle on a street or highway
33 in this state in violation of an order of impoundment or
34 immobilization is a serious misdemeanor. A motor vehicle
35 which is subject to an order of impoundment or immobilization

1 that is operated on a street or highway in this state in
2 violation of the order shall be seized and forfeited to the
3 state under chapter 809.

4 ~~13-~~ 11. Once the period of impoundment or immobilization
5 has expired, the owner of the motor vehicle shall have thirty
6 days to claim the motor vehicle and pay the any fees and
7 charges imposed under this section. If the owner or the
8 owner's designee has not claimed the vehicle and paid the any
9 fees and charges imposed under this section within seven days
10 from the date of expiration of the period, the clerk shall
11 send written notification to the motor vehicle owner, at the
12 owner's last known address, notifying the owner of the date of
13 expiration of the period of impoundment or immobilization and
14 of the period in which the motor vehicle must be claimed. If
15 the motor vehicle owner fails to claim the motor vehicle and
16 pay the any fees and charges imposed within the thirty-day
17 period, the motor vehicle shall be forfeited to the state
18 under chapter 809.

19 ~~14-~~ 12. a. During the period of impoundment or
20 immobilization, ~~a person convicted of the offense of operating~~
21 ~~while intoxicated which resulted in the impoundment or~~
22 ~~immobilization~~ an owner of an impounded or immobilized vehicle
23 shall not sell or transfer the title of the motor vehicle
24 which is subject to the order of impoundment or
25 immobilization. ~~The A person convicted of the offense of~~
26 ~~operating while intoxicated~~ held to have committed an offense
27 enumerated in subsection 2, subjecting the motor vehicle
28 involved to impoundment or immobilization, shall ~~also~~ not
29 purchase ~~another motor vehicle~~ or register any motor vehicle
30 during the period of impoundment or immobilization. Violation
31 of this paragraph is a serious misdemeanor.

32 b. If, during the period of impoundment or immobilization,
33 the title to the motor vehicle which is the subject of the
34 order is transferred by the foreclosure of a chattel mortgage,
35 a sale upon execution, the cancellation of a conditional sales

1 contract, or an order of a court, the court which enters the
2 order that permits transfer of the title shall notify the
3 department of the transfer of the title. The department shall
4 enter notice of the transfer of the title to the motor vehicle
5 in the previous owner's vehicle registration record.

6 ~~15-~~ 13. Notwithstanding the other requirements of this
7 ~~section-if-the-owner-of-the-motor-vehicle-is-not-the-person~~
8 ~~who-is-convicted-of-the-offense-which-resulted-in-the-issuance~~
9 ~~of-the-order-of-impoundment-or-immobilization-or-the-owner-of~~
10 ~~the-motor-vehicle-is-a:~~

11 a. A motor vehicle rental or leasing company, ~~the-owner,~~
12 ~~the-owner's-designee,-or-the-rental-or-leasing-company~~ shall
13 be permitted to submit a claim for return of the motor vehicle
14 within twenty-four hours from initial receipt of ~~the-order-for~~
15 notice of impoundment or immobilization. Upon learning the
16 address or phone number of a rental or leasing company which
17 owns a motor vehicle, the peace officer, county attorney, or
18 attorney general shall immediately contact the company to
19 inform the company that the vehicle is available for return to
20 the company. The vehicle shall be returned to the ~~owner,~~
21 ~~owner's-designee,-or-rental-or-leasing~~ company and the any
22 order for impoundment or immobilization shall be rescinded
23 with respect to the particular motor vehicle, if the ~~owner-or~~
24 ~~owner's-designee~~ company can prove to the satisfaction of the
25 court that ~~the-owner~~ it did not know or should not have known
26 that the vehicle was to be used in ~~the-commission-of-the~~
27 ~~offense-of-operating-while-intoxicated,-or-if-the-rental-or~~
28 ~~leasing-company-did-not-know,-should-not-have-known,-and-did~~
29 ~~not-consent-to-the-operation-of-the-motor-vehicle-used-in-the~~
30 ~~commission-of-the-offense-of-operating-while-intoxicated~~
31 violation of subsection 2. ~~For-purposes-of-this-section,~~
32 ~~unless-the-person-convicted-of-the-offense-which-results-in~~
33 ~~the-imposition-of-the-order-for-impoundment-or-immobilization~~
34 ~~is-not-in-lawful-possession-of-the-motor-vehicle-used-in-the~~
35 ~~commission-of-the-offense,-an-owner-of-a-motor-vehicle-shall~~

1 ~~be-presumed-to-know-that-the-vehicle-was-to-be-used-by-the~~
2 ~~person-who-is-convicted-of-the-offense,-in-the-commission-of~~
3 ~~the-offense-of-operating-while-intoxicated.~~

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

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

22 a. (1) A person, other than the person who committed the
23 offense which resulted in the impoundment or immobilization,
24 who is not a member of the immediate family of the person who
25 committed the offense but is a joint owner of the motor
26 vehicle.

27 b. (2) A member of the immediate family of the person who
28 committed the offense which resulted in the impoundment or
29 immobilization, if the member demonstrates that the motor
30 vehicle that is subject to the order for impoundment or
31 immobilization is the only motor vehicle possessed by the
32 family.

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

1 ~~10~~ 14. The impoundment, immobilization, or forfeiture of
2 a motor vehicle under this chapter does not constitute loss of
3 use of a motor vehicle for purposes of any contract of
4 insurance.

5 Sec. 2. Section 321J.21, Code 1995, is amended to read as
6 follows:

7 321J.21 DRIVING WHILE LICENSE SUSPENDED, DENIED, OR
8 REVOKED, OR BARRED.

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

22 Sec. 3. IMPLEMENTATION. Section 25B.2, subsection 3,
23 shall not apply to this Act.

24 EXPLANATION

25 This bill amends the section addressing impoundment or
26 immobilization of vehicles upon a second or subsequent
27 conviction for operating while intoxicated, adding the
28 impoundment or immobilization penalty for persons who operate
29 a vehicle while their license is suspended or revoked for an
30 OWI offense, and for owners of the vehicles that are operated
31 when these violations are committed, if the violation was
32 known or should have been known to the owner of the vehicle.
33 The bill makes the impoundment effective immediately. The
34 bill also makes an owner of such a vehicle jointly and
35 severally liable for any damage caused by the person operating

1 the vehicle, subject to the liability provisions of chapter
2 668, if the owner knows, should have known, or consents to
3 operation of the vehicle in the commission of the offense.
4 Such owners must also pay for costs of the hearing and for
5 impoundment costs.

6 The bill expressly adds a hearing procedure for
7 applications for return of the vehicle. The hearing must be
8 held not sooner than five but not more than 30 days after the
9 filing of the application. If the value of the motor vehicle
10 is less than \$10,000, the hearing may be held before a
11 magistrate or district associate judge and appealed in the
12 same manner as small claims proceedings. The motor vehicle is
13 to remain in impoundment during the course of the appeal.

14 The bill also adds an inventory procedure to occur during
15 impoundment or immobilization, and makes technical changes to
16 sections 321J.4B and 321J.21, to make the language in those
17 sections consistent.

18 This bill may contain a state mandate, as defined by
19 chapter 25B. Section 3 of this bill makes inapplicable
20 section 25B.2, subsection 3, which would relieve a political
21 subdivision from complying with a state mandate if funding for
22 the cost of the state mandate is not provided or specified.
23 Therefore, political subdivisions are required to comply with
24 any state mandate included in this bill.

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