

FILED MAR 15 1995

SENATE FILE 358
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 112)

(p.980)
Passed Senate, Date 3-30-95
Vote: Ayes 49 Nays 0
Approved March 2, 1995

(p.1717)
Passed House, Date 4/19/95
Vote: Ayes 96 Nays 0

A BILL FOR

1 An Act relating to habitual offenders of the motor vehicle laws,
2 by providing for an administrative adjudication of the
3 habitual offender status.

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

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1 Section 1. Section 321.556, Code 1995, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 321.556 NOTICE AND HEARING -- FINDINGS AND ORDER.

5 1. If, upon review of the record of convictions of any
6 person, the department determines that the person appears to
7 be a habitual offender, the department shall immediately
8 notify the person in writing and afford the licensee an
9 opportunity for a hearing. The notice shall direct the person
10 named in the notice to appear for hearing and show cause why
11 the person should not be barred from operating a motor vehicle
12 on the highways of this state. The notice shall meet the
13 requirements of section 17A.12 and shall be served in the
14 manner provided in that section. Service of notice on any
15 nonresident of this state may be made in the same manner as
16 provided in sections 321.498 through 321.506. A peace officer
17 stopping a person for whom a notice to appear for hearing has
18 been issued under the provisions of this section may
19 personally serve the notice upon forms approved by the
20 department to satisfy the notice requirements of this section.
21 A peace officer may confiscate the motor vehicle license of a
22 person if the license has been revoked or has been suspended
23 subsequent to a hearing and the person has not forwarded the
24 motor vehicle license to the department as required.

25 2. The hearing shall be conducted as provided in section
26 17A.12 before the department in the county where the alleged
27 events occurred, unless the director and the person agree that
28 the hearing may be held in some other county, or the hearing
29 may be held by telephone conference at the discretion of the
30 agency conducting the hearing. The hearing shall be recorded
31 and its scope shall be limited to the issue of whether the
32 person notified is a habitual offender.

33 3. An abstract certified by the director of transportation
34 may be admitted as evidence as provided in section 622.43, at
35 the hearing, and shall be prima facie evidence that the person

1 named in the abstract was duly convicted by the court in which
2 the conviction or holding was made of each offense shown by
3 the abstract. If the person named in the abstract denies
4 conviction of any of the relevant convictions contained in the
5 abstract, the person shall have the burden of proving that the
6 conviction is untrue. For purposes of this subsection, a
7 conviction is relevant if it is for one of the offenses listed
8 in section 321.555.

9 4. If the department finds that the person is not the same
10 person named in the abstract, or otherwise concludes that the
11 person is not a habitual offender as provided in section
12 321.555, the department shall issue a decision dismissing the
13 proceedings. If the department's findings and conclusions are
14 that the person is a habitual offender, the department shall
15 issue an order prohibiting the person from operating a motor
16 vehicle on the highways of this state for the period specified
17 in section 321.560. If a person is found to be a habitual
18 offender, the person shall surrender all licenses or permits
19 to operate a motor vehicle in this state to the department.

20 Sec. 2. Section 321.560, Code 1995, is amended to read as
21 follows:

22 321.560 BARRED FOR SIX YEARS.

23 A license to operate a motor vehicle in this state shall
24 not be issued to any person declared to be an a habitual
25 offender under section 321.555, subsection 1 for a period of
26 not less than two years nor more than six years from the date
27 of judgment-as-ordered-by-the-court the final decision of the
28 department under section 17A.19 or the date on which the
29 district court upholds the final decision of the department,
30 whichever occurs later. A license to operate a motor vehicle
31 in this state shall not be issued to any person declared to be
32 an a habitual offender under section 321.555, subsection 2,
33 for a period of one year from the date of judgment the final
34 decision of the department under section 17A.19 or the date on
35 which the district court upholds the final decision of the

1 department, whichever occurs later. The department shall
2 adopt rules under chapter 17A which establish a point system
3 which shall be used to determine the period for which a person
4 who is declared to be a habitual offender under section
5 321.555, subsection 1, shall not be issued a license.

6 Sec. 3. Section 321.561, Code 1995, is amended to read as
7 follows:

8 321.561 PUNISHMENT FOR VIOLATION.

9 It shall be unlawful for any person ~~convicted-as-an~~ found
10 to be a habitual offender to operate any motor vehicle in this
11 state during the period of time specified in section 321.560.
12 ~~This-conviction-shall-constitute~~ A person violating this
13 section commits an aggravated misdemeanor.

14 Sec. 4. Section 331.756, subsection 58, Code 1995, is
15 amended by striking the subsection.

16 Sec. 5. Section 602.8102, subsection 52, Code 1995, is
17 amended by striking the subsection.

18 Sec. 6. Section 602.8106, subsection 1, paragraph a, Code
19 1995, is amended to read as follows:

20 a. Except as otherwise provided in paragraphs "b" and "c",
21 for filing and docketing a criminal case to be paid by the
22 county or city which has the duty to prosecute the criminal
23 action, payable as provided in section 602.8109, thirty
24 dollars. When judgment is rendered against the defendant,
25 costs collected from the defendant shall be paid to the county
26 or city which has the duty to prosecute the criminal action to
27 the extent necessary for reimbursement for fees paid.
28 However, the fees which are payable by the county to the clerk
29 of the district court for services rendered in criminal
30 actions prosecuted under state law ~~and-in-habitual-offender~~
31 ~~actions-pursuant-to-section-321-556,~~ and the court costs taxed
32 in connection with the trial of those actions or appeals from
33 the judgments in those actions are waived.

34 Sec. 7. REPEAL. Sections 321.557, 321.558, and 321.559,
35 Code 1995, are repealed.

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EXPLANATION

2 This bill provides for the administrative determination by
3 the department of transportation of whether a person's license
4 is to be barred for being a habitual offender. Currently the
5 determinations of whether a person is to be declared a
6 habitual offender are made by the court. Under the bill, the
7 administrative hearings are to be conducted in the same manner
8 as contested case hearings under chapter 17A, although
9 provision is made for a change in the location of the hearing
10 and for telephone hearings if the person who is the subject of
11 the hearing and the department agree. Service is to be made
12 in the same manner as in other administrative hearings, except
13 that a peace officer who has stopped a person for another
14 reason may serve the person with the notice on forms to be
15 developed by the department. Service on nonresidents of this
16 state may be made in the same manner as other actions by the
17 department against nonresidents. If a person is found to be a
18 habitual offender under section 321.555, subsection 1, for
19 commission of three offenses of vehicular manslaughter,
20 operating while intoxicated, driving while suspended, revoked,
21 or barred, a felony vehicle offense, or failure to stop and
22 leave information within a six-year period, the person's
23 license will be barred for no less than two and no more than
24 six years from the date on which the department's decision
25 becomes final. If a person is found to be a habitual offender
26 under section 321.555, subsection 2, for the commission of six
27 reportable traffic or license offenses within a two-year
28 period, the person's license is to be barred for one year.
29 The department's decision is considered final by the latter of
30 either the date of the agency's decision or the date on which
31 the agency's decision is affirmed by the court. The
32 department is to adopt rules establishing a point system which
33 is to be used to determine the length of time for which the
34 person is to be barred from possessing a license to operate a
35 motor vehicle in this state if the person is found to be a

1 habitual offender and the person's license is to be barred for
2 at least two, but not more than six, years.

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SENATE FILE 358

S-3212

1 Amend Senate File 358 as follows:

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

4 "Section 1. Section 321.215, subsection 2,
5 unnumbered paragraph 1, Code 1995, is amended to read
6 as follows:

7 Upon conviction and the suspension or revocation of
8 a person's motor vehicle license under section
9 321.209, subsection 5, 6, or 8; 321.210; 321.210A; or
10 321.513; or upon the denial of issuance of a motor
11 vehicle license under section 321.560, based solely on
12 offenses enumerated in section 321.555, subsection 1,
13 paragraph "c", or section 321.555, subsection 2, and
14 upon the denial by the director of an application for
15 a temporary restricted license, a person may apply to
16 the district court having jurisdiction for the
17 residence of the person for a temporary restricted
18 permit to operate a motor vehicle for the limited
19 purpose or purposes specified in subsection 1. The
20 application may be granted only if all of the
21 following criteria are satisfied:"

22 2. Page 2, line 30, by inserting after the word
23 "later." the following: "However, a temporary
24 restricted license may be issued to a person declared
25 to be a habitual offender under section 321.555,
26 subsection 1, paragraph "c", pursuant to section
27 321.215, subsection 2."

28 3. Page 3, line 11, by inserting after the figure
29 "321.560" the following: "except for a habitual
30 offender who has been granted a temporary restricted
31 license pursuant to section 321.215, subsection 2".

32 4. Page 3, by inserting after line 13 the
33 following:

34 "Sec. ____ . Section 321J.17, Code 1995, is amended
35 to read as follows:

36 321J.17 CIVIL PENALTY -- DISPOSITION --
37 REINSTATEMENT.

38 When the department revokes a person's motor
39 vehicle license or nonresident operating privilege
40 under this chapter, the department shall assess the
41 person a civil penalty of two hundred dollars. The
42 money collected by the department under this section
43 shall be transmitted to the treasurer of state who
44 shall deposit one-half of the money in the separate
45 fund established in section 912.14 and one-half of the
46 money shall be deposited in the general fund of the
47 state. ~~A temporary-restricted-license-shall-not-be~~
48 ~~issued-or-a~~ motor vehicle license or nonresident
49 operating privilege shall not be reinstated until the
50 civil penalty has been paid."

S-3212

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S-3212

Page 2

1 5. By renumbering as necessary.

By JIM LIND
ANDY MCKEAN

MARY LUNDBY
RICHARD DRAKE

ADOPTED
3-30-95 (P. 980)

SENATE FILE 358

S-3257

1 Amend Senate File 358 as follows:

- 2 1. Page 2, line 19, by inserting after the word
- 3 "department." the following: "A person who is found
- 4 to be an habitual offender may be assessed a fee by
- 5 the department to cover the costs of the habitual
- 6 offender proceedings. Fees assessed shall be paid
- 7 before the person may be issued a license or permit to
- 8 operate a motor vehicle in this state."
- 9 2. Title page, line 3, by inserting after the
- 10 word "status" the following: ", and providing for the
- 11 payment of fees".

By ANDY MCKEAN

S-3257 FILED MARCH 28, 1995

Adopted 3-30-95
(P. 980)

SENATE FILE 358

S-3256

1 Amend Senate File 358 as follows:

- 2 1. Page 3, by inserting after line 35 the
- 3 following:
- 4 "Sec. ____ . REPORT BY DEPARTMENT OF TRANSPORTATION.
- 5 The department of transportation shall, by January 15,
- 6 1996, submit a report to the general assembly
- 7 regarding the number of habitual offender contested
- 8 cases which take place on or after the effective date
- 9 of this Act. The report shall also contain
- 10 information regarding the average length and cost of
- 11 conducting the hearings."
- 12 2. By renumbering as necessary.

By ANDY MCKEAN

S-3256 FILED MARCH 28, 1995

Adopted
3-30-95 (P. 980)

**SENATE FILE 358
FISCAL NOTE**

A fiscal note for Senate File 358 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 358 provides for the administrative determination by the Department of Transportation (DOT) of whether a person's license is to be barred for being a habitual offender. Currently, these determinations are made by the courts. This bill provides for an administrative hearing to be conducted in the same manner as contested case hearings under Chapter 17A. For the commission of three offenses involving vehicular manslaughter, operating while intoxicated, driving with a suspended license, a felony vehicle offense, or failure to stop and leave information, within a six-year period, the person's license will be barred for no less than two years and not more than six years. If a person is found to be a habitual offender for the commission of six traffic or license offenses within a two-year period, the person's license will be barred for one year.

Assumptions

The number of contested case hearings to the Department of Inspections and Appeals is estimated to increase by 5,400. The Department of Inspections and Appeals cost per contested case is \$291.

The number of habitual offender cases handled by the Courts will decrease by 5,400.

Twelve percent (12%) of the contested cases (628) will be appealed for Director Review at a cost of \$150 per case.

This legislation will require 640 hours of programming time for the DOT at \$25 per hour.

Notices sent via certified mail will cost \$22,734 (5,400 cases @ \$4.21). Fifty percent (50%) of the notices (2,700) will be returned to the DOT. This is based on the current return rate for license revocations.

The DOT processing cost for notices returned and sent for personal delivery by a law enforcement officer will cost \$5,670 (2,700 cases @ \$2.10).

The cost for the personal delivery of a license suspension by a law enforcement officer is \$12.25. The cost to the DOT for the delivery of 2,700 notices is \$33,075.

Fiscal Effect

Contested Case Hearings: 5,400 cases @ \$291 = \$1,571,400

Contested cases appealed for Director Review: 628 cases @ \$150 = \$94,200

-2-

DOT notifications: \$61,479
DOT programming costs: \$16,000

Total cost: \$1,743,079 to the Road Use Tax Fund

The decrease of 5,400 contested cases will allow the Courts and local prosecuting attorneys to focus efforts in other areas.

Sources: Department of Transportation
Department of Inspections and Appeals
Judicial Department

(LSB 1440sv, DLR)

FILED MARCH 23, 1995

BY DENNIS PROUTY, FISCAL DIRECTOR

**SENATE FILE 358
FISCAL NOTE**

A fiscal note for Senate File 358 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 358 provides for the administrative determination by the Department of Transportation (DOT) of whether a person's license is to be barred for being a habitual offender. Currently, these determinations are made by the courts. This Bill provides for an administrative hearing to be conducted in the same manner as contested case hearings under Chapter 17A. For the commission of three offenses involving vehicular manslaughter, operating while intoxicated, driving with a suspended license, a felony vehicle offense, or failure to stop and leave information, within a six-year period, the person's license will be barred for no less than two years and not more than six years. If a person is found to be a habitual offender for the commission of six traffic or license offenses within a two-year period, the person's license will be barred for one year.

Assumptions

The number of contested case hearings to the Department of Inspections and Appeals is estimated to increase by 1,350, which is 25% of the total (5,400) habitual offender cases. The Department of Inspections and Appeals cost per contested case is \$125.

The number of habitual offender cases handled by the Courts will decrease by 5,400.

Twelve percent (12%) of the contested cases (162) will be appealed for Director Review at a cost of \$150 per case.

This legislation will require 640 hours of programming time for the DOT at \$25 per hour.

The increased cost for sending notices certified mail and for the personal delivery of notices by a law enforcement officer is estimated at \$33,575.

Fiscal Effect

Contested Case Hearings: 1,350 cases @ \$125 = \$168,750
Contested cases appealed for Director Review: 162 cases @ \$150 = \$24,300
DOT notifications: \$33,575
DOT programming costs: \$16,000

Total cost: \$242,625 to the Road Use Tax Fund

Sources: Department of Transportation

-2-

Department of Inspections and Appeals
Judicial Department

(LSB 1440SV.2, DLR)

FILED MARCH 28, 1995

BY DENNIS PROUTY, FISCAL DIRECTOR

1 Section 1. Section 321.215, subsection 2, unnumbered
 2 paragraph 1, Code 1995, is amended to read as follows:
 3 Upon conviction and the suspension or revocation of a
 4 person's motor vehicle license under section 321.209,
 5 subsection 5, 6, or 8; 321.210; 321.210A; or 321.513; or upon
 6 the denial of issuance of a motor vehicle license under
 7 section 321.560, based solely on offenses enumerated in
 8 section 321.555, subsection 1, paragraph "c", or section
 9 321.555, subsection 2, and upon the denial by the director of
 10 an application for a temporary restricted license, a person
 11 may apply to the district court having jurisdiction for the
 12 residence of the person for a temporary restricted permit to
 13 operate a motor vehicle for the limited purpose or purposes
 14 specified in subsection 1. The application may be granted
 15 only if all of the following criteria are satisfied:

16 Sec. 2. Section 321.556, Code 1995, is amended by striking
 17 the section and inserting in lieu thereof the following:

18 321.556 NOTICE AND HEARING -- FINDINGS AND ORDER.

19 1. If, upon review of the record of convictions of any
 20 person, the department determines that the person appears to
 21 be a habitual offender, the department shall immediately
 22 notify the person in writing and afford the licensee an
 23 opportunity for a hearing. The notice shall direct the person
 24 named in the notice to appear for hearing and show cause why
 25 the person should not be barred from operating a motor vehicle
 26 on the highways of this state. The notice shall meet the
 27 requirements of section 17A.12 and shall be served in the
 28 manner provided in that section. Service of notice on any
 29 nonresident of this state may be made in the same manner as
 30 provided in sections 321.498 through 321.506. A peace officer
 31 stopping a person for whom a notice to appear for hearing has
 32 been issued under the provisions of this section may
 33 personally serve the notice upon forms approved by the
 34 department to satisfy the notice requirements of this section.
 35 A peace officer may confiscate the motor vehicle license of a

1 person if the license has been revoked or has been suspended
2 subsequent to a hearing and the person has not forwarded the
3 motor vehicle license to the department as required.

4 2. The hearing shall be conducted as provided in section
5 17A.12 before the department in the county where the alleged
6 events occurred, unless the director and the person agree that
7 the hearing may be held in some other county, or the hearing
8 may be held by telephone conference at the discretion of the
9 agency conducting the hearing. The hearing shall be recorded
10 and its scope shall be limited to the issue of whether the
11 person notified is a habitual offender.

12 3. An abstract certified by the director of transportation
13 may be admitted as evidence as provided in section 622.43, at
14 the hearing, and shall be prima facie evidence that the person
15 named in the abstract was duly convicted by the court in which
16 the conviction or holding was made of each offense shown by
17 the abstract. If the person named in the abstract denies
18 conviction of any of the relevant convictions contained in the
19 abstract, the person shall have the burden of proving that the
20 conviction is untrue. For purposes of this subsection, a
21 conviction is relevant if it is for one of the offenses listed
22 in section 321.555.

23 4. If the department finds that the person is not the same
24 person named in the abstract, or otherwise concludes that the
25 person is not a habitual offender as provided in section
26 321.555, the department shall issue a decision dismissing the
27 proceedings. If the department's findings and conclusions are
28 that the person is a habitual offender, the department shall
29 issue an order prohibiting the person from operating a motor
30 vehicle on the highways of this state for the period specified
31 in section 321.560. If a person is found to be a habitual
32 offender, the person shall surrender all licenses or permits
33 to operate a motor vehicle in this state to the department. A
34 person who is found to be an habitual offender may be assessed
35 a fee by the department to cover the costs of the habitual

1 offender proceedings. Fees assessed shall be paid before the
2 person may be issued a license or permit to operate a motor
3 vehicle in this state.

4 Sec. 3. Section 321.560, Code 1995, is amended to read as
5 follows:

6 321.560 BARRED FOR SIX YEARS.

7 A license to operate a motor vehicle in this state shall
8 not be issued to any person declared to be an a habitual
9 offender under section 321.555, subsection 1 for a period of
10 not less than two years nor more than six years from the date
11 of judgment-as-ordered-by-the-court the final decision of the
12 department under section 17A.19 or the date on which the
13 district court upholds the final decision of the department,
14 whichever occurs later. However, a temporary restricted
15 license may be issued to a person declared to be a habitual
16 offender under section 321.555, subsection 1, paragraph "c",
17 pursuant to section 321.215, subsection 2. A license to
18 operate a motor vehicle in this state shall not be issued to
19 any person declared to be an a habitual offender under section
20 321.555, subsection 2, for a period of one year from the date
21 of judgment the final decision of the department under section
22 17A.19 or the date on which the district court upholds the
23 final decision of the department, whichever occurs later. The
24 department shall adopt rules under chapter 17A which establish
25 a point system which shall be used to determine the period for
26 which a person who is declared to be a habitual offender under
27 section 321.555, subsection 1, shall not be issued a license.

28 Sec. 4. Section 321.561, Code 1995, is amended to read as
29 follows:

30 321.561 PUNISHMENT FOR VIOLATION.

31 It shall be unlawful for any person convicted-as-an found
32 to be a habitual offender to operate any motor vehicle in this
33 state during the period of time specified in section 321.560
34 except for a habitual offender who has been granted a
35 temporary restricted license pursuant to section 321.215,

1 subsection 2. This conviction shall constitute A person
2 violating this section commits an aggravated misdemeanor.

3 Sec. 5. Section 321J.17, Code 1995, is amended to read as
4 follows:

5 321J.17 CIVIL PENALTY -- DISPOSITION -- REINSTATEMENT.

6 When the department revokes a person's motor vehicle
7 license or nonresident operating privilege under this chapter,
8 the department shall assess the person a civil penalty of two
9 hundred dollars. The money collected by the department under
10 this section shall be transmitted to the treasurer of state
11 who shall deposit one-half of the money in the separate fund
12 established in section 912.14 and one-half of the money shall
13 be deposited in the general fund of the state. A temporary
14 restricted-license shall not be issued or a motor vehicle
15 license or nonresident operating privilege shall not be
16 reinstated until the civil penalty has been paid.

17 Sec. 6. Section 331.756, subsection 58, Code 1995, is
18 amended by striking the subsection.

19 Sec. 7. Section 602.8102, subsection 52, Code 1995, is
20 amended by striking the subsection.

21 Sec. 8. Section 602.8106, subsection 1, paragraph a, Code
22 1995, is amended to read as follows:

23 a. Except as otherwise provided in paragraphs "b" and "c",
24 for filing and docketing a criminal case to be paid by the
25 county or city which has the duty to prosecute the criminal
26 action, payable as provided in section 602.8109, thirty
27 dollars. When judgment is rendered against the defendant,
28 costs collected from the defendant shall be paid to the county
29 or city which has the duty to prosecute the criminal action to
30 the extent necessary for reimbursement for fees paid.

31 However, the fees which are payable by the county to the clerk
32 of the district court for services rendered in criminal
33 actions prosecuted under state law ~~and in habitual-offender~~
34 ~~actions-pursuant-to-section-321-556,~~ and the court costs taxed
35 in connection with the trial of those actions or appeals from

1 the judgments in those actions are waived.

2 Sec. 9. REPEAL. Sections 321.557, 321.558, and 321.559,
3 Code 1995, are repealed.

4 Sec. 10. REPORT BY DEPARTMENT OF TRANSPORTATION. The
5 department of transportation shall, by January 15, 1996,
6 submit a report to the general assembly regarding the number
7 of habitual offender contested cases which take place on or
8 after the effective date of this Act. The report shall also
9 contain information regarding the average length and cost of
10 conducting the hearings.

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SENATE FILE 358

H-3965

1 Amend Senate File 358, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 4, by inserting after line 16 the
4 following:

5 "Sec. . . . NEW SECTION. 321J.24A YOUTHFUL
6 OFFENDER SUBSTANCE ABUSE AWARENESS PROGRAM.

7 1. As used in this section, unless the context
8 otherwise requires:

9 a. "Participant" means a person whose motor
10 vehicle license or operating privilege has been
11 revoked for a violation of section 321J.2A, if enacted
12 by 1995 Iowa Acts, Senate File 446.

13 b. "Program" means a substance abuse awareness
14 program provided under a contract entered into between
15 the provider and the commission on substance abuse of
16 the Iowa department of public health under chapter
17 125.

18 c. "Program coordinator" means a person assigned
19 the duty to coordinate a participant's activities in a
20 program by the program provider.

21 2. A substance abuse awareness program is
22 established in each of the regions established by the
23 commission on substance abuse. The program shall
24 consist of an insight class and a substance abuse
25 evaluation, which shall be attended by the
26 participant, to discuss issues related to the
27 potential consequences of substance abuse. The parent
28 or parents of the participant shall also be encouraged
29 to participate in the program. The program provider
30 shall consult with the participant or the parents of
31 the participant in the program to determine the timing
32 and appropriate level of participation for the
33 participant and any participation by the participant's
34 parents. The program may also include a supervised
35 educational tour by the participant to any or all of
36 the following:

37 a. A hospital or other emergency medical care
38 facility which regularly receives victims of motor
39 vehicle accidents, to observe treatment of appropriate
40 victims of motor vehicle accidents involving
41 intoxicated drivers, under the supervision of a
42 registered nurse, physician, paramedic, or emergency
43 medical technician.

44 b. A facility for the treatment of chemical
45 substance abuse as defined in section 125.2, under the
46 supervision of appropriately licensed medical
47 personnel.

48 c. If approved by the state or county medical
49 examiner, a morgue or a similar facility to receive
50 appropriate educational material and instruction

H-3965

H-3965

Page 2

1 concerning damage caused by the consumption of alcohol
2 or other drugs, under the supervision of the county
3 medical examiner or deputy medical examiner.

4 3. If the program includes a tour, the program
5 coordinator shall explain and discuss the experiences
6 which may be encountered during the tour to the
7 participant. If the program coordinator determines at
8 any time before or during a tour that the tour may be
9 traumatic or otherwise inappropriate for the
10 participant, the program coordinator shall terminate
11 the tour without prejudice to the participant.

12 4. Upon the revocation of the motor vehicle
13 license or operating privileges of a person who is
14 fourteen years of age or older for a violation of
15 section 321J.2A, if enacted, if the person has had no
16 previous revocations under either section 321J.2 or
17 section 321J.2A, if enacted, a person may participate
18 in the substance abuse awareness program. The state
19 department of transportation shall notify a potential
20 program participant of the possibility and potential
21 benefits of attending a program and shall notify a
22 potential program participant of the availability
23 programs which exist in the area in which the person
24 resides. The state department of transportation shall
25 consult with the Iowa department of public health to
26 determine what programs are available in various areas
27 of the state. The period of revocation for a person
28 whose motor vehicle license or operating privilege has
29 been revoked under section 321J.2A, if enacted, shall
30 be reduced by fifty percent upon receipt by the state
31 department of transportation of a certification by a
32 program provider that the person has completed a
33 program.

34 5. Program providers and facilities toured during
35 the program are not liable for any civil damages
36 resulting from injury to the participant, or civil
37 damages caused by the participant during or from any
38 activities related to a tour, except for willful or
39 grossly negligent acts intended to, or reasonably
40 expected to result in, such injury or damage.

41 6. The program provider shall determine fees to be
42 paid by participants in the program. The program fees
43 shall be paid on a sliding scale, based upon the
44 ability of a participant and a participant's family to
45 pay the fees, and shall not exceed one hundred dollars
46 per participant. The program provider shall use the
47 fees to pay all costs associated with the program."

48 2. Page 5, by inserting after line 1 the
49 following:

50 "Sec. ____ . Section 321J.12, subsection 5, as

H-3965

1 enacted by 1995 Iowa Acts, Senate File 446, is amended
2 to read as follows:

3 5. Upon certification, subject to penalty of
4 perjury, by the peace officer that there existed
5 reasonable grounds to believe that the person had been
6 operating a motor vehicle in violation of section
7 321J.2A, that there existed one or more of the
8 necessary conditions for chemical testing described in
9 section 321J.6, subsection 1, and that the person
10 submitted to chemical testing and the test results
11 indicated an alcohol concentration as defined in
12 section 321J.1 of .02 or more but less than .10, the
13 department shall revoke the person's motor vehicle
14 license or operating privilege for a period of ~~thirty~~
15 sixty days if the person has had no revocations within
16 the previous six years under section 321J.2A, and for
17 a period of ninety days if the person has had one or
18 more previous revocations within the previous six
19 years under section 321J.2A."

20 3. Title page, line 1, by striking the word
21 "habitual" and inserting the following: "certain".

22 4. Title page, line 3, by inserting after the
23 word "status," the following: "providing for a
24 youthful offender substance abuse awareness program,".

25 5. By numbering and renumbering as necessary.

By THOMSON of Linn
KREIMAN of Davis

H-3965 FILED APRIL 18, 1995

adopted
4-19-95
(P.1717)

SENATE FILE 358

H-3960

- 1 Amend Senate File 358 as amended, passed, and
 2 reprinted by the Senate, as follows:
 3 1. Page 4, by inserting after line 2 the
 4 following:
 5 "Sec. ____ . Section 321J.4B, subsection 12, as
 6 enacted by 1995 Iowa Acts, Senate File 446, is amended
 7 to read as follows:
 8 12. Operating a motor vehicle on a street or
 9 highway in this state in violation of an order of
 10 impoundment or immobilization is a serious
 11 misdemeanor. A motor vehicle which is subject to an
 12 order of impoundment or immobilization that is
 13 operated on a street or highway in this state during
 14 the period of impoundment or immobilization in
 15 violation of the order shall be seized and forfeited
 16 to the state under chapter 809."
 17 2. Title page, line 3, by inserting after the
 18 word "status," the following: "providing penalties,".
 19 3. By renumbering as necessary.

By GRUBBS of Scott

H-3960 FILED APRIL 17, 1995

Adopted 4-19-95
(P. 1714)

SENATE FILE 358

H-3963

- 1 Amend Senate File 358, as amended, passed, and
 2 reprinted by the Senate as follows:
 3 1. Page 4, by inserting after line 16 the
 4 following:
 5 "Sec. ____ . Section 321J.20, Code 1995, is amended
 6 by adding the following new subsection:
 7 NEW SUBSECTION. 6. Following the minimum period
 8 of ineligibility, a temporary restricted license under
 9 this section shall not be issued until such time as
 10 the applicant installs an ignition interlock device of
 11 a type approved by the commissioner of public safety
 12 on all motor vehicles owned or operated by the
 13 applicant, in accordance with section 321J.4,
 14 subsection 7. Installation of an ignition interlock
 15 device under this section shall be required for the
 16 period of time for which the temporary restricted
 17 license is issued, but no longer than one year, unless
 18 the court order under section 321J.4, subsection 7,
 19 provides for a longer period of time."
 20 2. Title page, line 3, by inserting after the
 21 word "status," the following: "requiring ignition
 22 interlock devices for temporary restricted licenses,".
 23 3. By renumbering as necessary.

By GRUBBS of Scott

H-3963 FILED APRIL 17, 1995

Adopted 4-19-95 *(P. 1714)*

SENATE AMENDMENT TO HOUSE AMENDMENT TO SENATE FILE 358
H-4055

- 1 Amend the House amendment, S-3489, to Senate File
2 358, as amended, passed, and reprinted by the Senate,
3 as follows:
4 1. Page 1, by striking lines 3 through 9.
5 2. Page 1, by striking lines 24 through 27.
6 3. By renumbering as necessary.

RECEIVED FROM THE SENATE

H-4055 FILED APRIL 25, 1995

House concurred 4/26/95 (p. 1907)

**SENATE FILE 358
FISCAL NOTE**

A fiscal note for Senate File 358 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 358 provides for the administrative determination by the Department of Transportation (DOT) of whether a person's license is to be barred for being a habitual offender. Currently, these determinations are made by the courts. This Bill provides for an administrative hearing to be conducted in the same manner as contested case hearings under Chapter 17A. Allows the DOT to assess a fee to cover the cost of contested cases. For the commission of three offenses involving vehicular manslaughter, operating while intoxicated, driving with a suspended license, a felony vehicle offense, or failure to stop and leave information, within a six-year period, the person's license will be barred for no less than two years and not more than six years. If a person is found to be a habitual offender for the commission of six traffic or license offenses within a two-year period, the person's license will be barred for one year.

Assumptions

1. The number of contested case hearings to the Department of Inspections and Appeals is estimated to increase by 1,350, 25% of the total (5,400) habitual offender cases. The Department of Inspections and Appeals cost per contested case is \$125.
2. The number of habitual offender cases handled by the Courts will decrease by 5,400.
3. Twelve percent (12%) of the contested cases (162) will be appealed for Director Review at a cost of \$150 per case.
4. This legislation will require 640 hours of programming time for the DOT at \$25 per hour. This will be a one-time cost of \$16,000.
5. The increased cost for sending notices certified mail and for the personal delivery of notices by a law enforcement officer is estimated at \$33,575.
6. The DOT will assess a fee to cover the cost of contested case proceedings.

Fiscal Effect

Senate File 358 will have a minimal impact on the Road Use Tax Fund due to the DOT assessing a fee to cover the cost of contested case proceedings. The DOT will experience a one-time programming cost of \$16,000. The programming would be conducted by existing staff.

The Bill will reduce the caseload to the Courts by 5,400 cases, including an

-2-

estimated 1,350 contested cases, which will allow the Courts and county prosecuting attorneys to focus efforts on other cases.

Sources: Department of Transportation
Department of Inspections and Appeals
Judicial Department

(LSB 1440sv.3, DLR)

FILED APRIL 3, 1995

BY DENNIS PROUTY, FISCAL DIRECTOR

HOUSE AMENDMENT TO
SENATE FILE 358

S-3489

1 Amend Senate File 358, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 1, by striking lines 1 through 15.
4 2. Page 3, by striking lines 14 through 17 and
5 inserting the following: "whichever occurs later. A
6 license to".
7 3. Page 3, by striking lines 34 and 35.
8 4. Page 4, line 1, by striking the word and
9 figure "subsection 2".
10 5. Page 4, by inserting after line 2 the
11 following:
12 "Sec. ____ . Section 321J.4B, subsection 12, as
13 enacted by 1995 Iowa Acts, Senate File 446, is amended
14 to read as follows:
15 12. Operating a motor vehicle on a street or
16 highway in this state in violation of an order of
17 impoundment or immobilization is a serious
18 misdemeanor. A motor vehicle which is subject to an
19 order of impoundment or immobilization that is
20 operated on a street or highway in this state during
21 the-period-of-impoundment-or-immobilization in
22 violation of the order shall be seized and forfeited
23 to the state under chapter 809."
24 6. Page 4, lines 13 and 14, by striking the words
25 "~~temporary-restricted-license-shall-not-be-issued-or~~
26 ~~a~~" and inserting the following: "temporary restricted
27 license shall not be issued or a".
28 7. Page 4, by inserting after line 16 the
29 following:
30 "Sec. ____ . Section 321J.20, Code 1995, is amended
31 by adding the following new subsection:
32 NEW SUBSECTION. 6. Following the minimum period
33 of ineligibility, a temporary restricted license under
34 this section shall not be issued until such time as
35 the applicant installs an ignition interlock device of
36 a type approved by the commissioner of public safety
37 on all motor vehicles owned or operated by the
38 applicant, in accordance with section 321J.4,
39 subsection 7. Installation of an ignition interlock
40 device under this section shall be required for the
41 period of time for which the temporary restricted
42 license is issued, but no longer than one year, unless
43 the court order under section 321J.4, subsection 7,
44 provides for a longer period of time."
45 8. Page 4, by inserting after line 16 the
46 following:
47 "Sec. ____ . NEW SECTION. 321J.24A YOUTHFUL
48 OFFENDER SUBSTANCE ABUSE AWARENESS PROGRAM.
49 1. As used in this section, unless the context
50 otherwise requires:

S-3489

-1-

S-3489

Page 2

1 a. "Participant" means a person whose motor
2 vehicle license or operating privilege has been
3 revoked for a violation of section 321J.2A, if enacted
4 by 1995 Iowa Acts, Senate File 446.

5 b. "Program" means a substance abuse awareness
6 program provided under a contract entered into between
7 the provider and the commission on substance abuse of
8 the Iowa department of public health under chapter
9 125.

10 c. "Program coordinator" means a person assigned
11 the duty to coordinate a participant's activities in a
12 program by the program provider.

13 2. A substance abuse awareness program is
14 established in each of the regions established by the
15 commission on substance abuse. The program shall
16 consist of an insight class and a substance abuse
17 evaluation, which shall be attended by the
18 participant, to discuss issues related to the
19 potential consequences of substance abuse. The parent
20 or parents of the participant shall also be encouraged
21 to participate in the program. The program provider
22 shall consult with the participant or the parents of
23 the participant in the program to determine the timing
24 and appropriate level of participation for the
25 participant and any participation by the participant's
26 parents. The program may also include a supervised
27 educational tour by the participant to any or all of
28 the following:

29 a. A hospital or other emergency medical care
30 facility which regularly receives victims of motor
31 vehicle accidents, to observe treatment of appropriate
32 victims of motor vehicle accidents involving
33 intoxicated drivers, under the supervision of a
34 registered nurse, physician, paramedic, or emergency
35 medical technician.

36 b. A facility for the treatment of chemical
37 substance abuse as defined in section 125.2, under the
38 supervision of appropriately licensed medical
39 personnel.

40 c. If approved by the state or county medical
41 examiner, a morgue or a similar facility to receive
42 appropriate educational material and instruction
43 concerning damage caused by the consumption of alcohol
44 or other drugs, under the supervision of the county
45 medical examiner or deputy medical examiner.

46 3. If the program includes a tour, the program
47 coordinator shall explain and discuss the experiences
48 which may be encountered during the tour to the
49 participant. If the program coordinator determines at
50 any time before or during a tour that the tour may be

S-3489

-2-

S-3489

Page 3

1 traumatic or otherwise inappropriate for the
2 participant, the program coordinator shall terminate
3 the tour without prejudice to the participant.
4 4. Upon the revocation of the motor vehicle
5 license or operating privileges of a person who is
6 fourteen years of age or older for a violation of
7 section 321J.2A, if enacted, if the person has had no
8 previous revocations under either section 321J.2 or
9 section 321J.2A, if enacted, a person may participate
10 in the substance abuse awareness program. The state
11 department of transportation shall notify a potential
12 program participant of the possibility and potential
13 benefits of attending a program and shall notify a
14 potential program participant of the availability
15 programs which exist in the area in which the person
16 resides. The state department of transportation shall
17 consult with the Iowa department of public health to
18 determine what programs are available in various areas
19 of the state. The period of revocation for a person
20 whose motor vehicle license or operating privilege has
21 been revoked under section 321J.2A, if enacted, shall
22 be reduced by fifty percent upon receipt by the state
23 department of transportation of a certification by a
24 program provider that the person has completed a
25 program.

26 5. Program providers and facilities toured during
27 the program are not liable for any civil damages
28 resulting from injury to the participant, or civil
29 damages caused by the participant during or from any
30 activities related to a tour, except for willful or
31 grossly negligent acts intended to, or reasonably
32 expected to result in, such injury or damage.

33 6. The program provider shall determine fees to be
34 paid by participants in the program. The program fees
35 shall be paid on a sliding scale, based upon the
36 ability of a participant and a participant's family to
37 pay the fees, and shall not exceed one hundred dollars
38 per participant. The program provider shall use the
39 fees to pay all costs associated with the program."

40 9. Page 5, by inserting after line 1 the
41 following:

42 "Sec. ____ . Section 321J.12, subsection 5, as
43 enacted by 1995 Iowa Acts, Senate File 446, is amended
44 to read as follows:

45 5. Upon certification, subject to penalty of
46 perjury, by the peace officer that there existed
47 reasonable grounds to believe that the person had been
48 operating a motor vehicle in violation of section
49 321J.2A, that there existed one or more of the
50 necessary conditions for chemical testing described in

S-3489

-3-

S-3489

Page 4

1 section 321J.6, subsection 1, and that the person
2 submitted to chemical testing and the test results
3 indicated an alcohol concentration as defined in
4 section 321J.1 of .02 or more but less than .10, the
5 department shall revoke the person's motor vehicle
6 license or operating privilege for a period of ~~thirty~~
7 sixty days if the person has had no revocations within
8 the previous six years under section 321J.2A, and for
9 a period of ninety days if the person has had one or
10 more previous revocations within the previous six
11 years under section 321J.2A."

12 10. Title page, line 1, by striking the word
13 "habitual" and inserting the following: "certain".

14 11. Title page, line 3, by inserting after the
15 word "status," the following: "providing for a
16 youthful offender substance abuse awareness program,".

17 12. Title page, line 3, by inserting after the
18 word "status," the following: "requiring ignition
19 interlock devices for temporary restricted licenses,".

20 13. Title page, line 3, by inserting after the
21 word "status," the following: "providing penalties,".

22 14. By renumbering, relettering, or redesignating
23 and correcting internal references as necessary.

RECEIVED FROM THE HOUSE

S-3489 FILED APRIL 19, 1995

*Senate concurred in as amended
4/24/95 (p. 1354)*

SENATE FILE 358

S-3506

1 Amend the House amendment, S-3489, to Senate File
2 358, as amended, passed, and reprinted by the Senate,
3 as follows:

4 1. Page 1, by striking lines 3 through 9.

5 2. Page 1, by striking lines 24 through 27.

6 3. By renumbering as necessary.

By JIM LIND
DON GETTINGS

RANDAL J. GIANNETTO
MARY A. LUNDBY

S-3506 FILED APRIL 20, 1995

Adopted 4/24/95 (p. 1354)

McKean, Chair
Giannetto
Vilsack
Hansen
Redfern

SSB-112

Judiciary

Succeeded By
SENATE FILE 358

BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY CHAIRPERSON
GIANNETTO)

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

A BILL FOR

1 An Act relating to habitual offenders of the motor vehicle laws,
2 by providing for an administrative adjudication of the
3 habitual offender status.

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

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Revised By

1 Section 1. Section 321.556, Code 1995, is amended by
2 striking the section and inserting in lieu thereof the
3 following:
4 321.556 NOTICE AND HEARING -- FINDINGS AND ORDER.
5 1. If, upon review of the record of convictions of any
6 person, the department determines that the person appears to
7 be a habitual offender, the department shall immediately
8 notify the person in writing and afford the licensee an
9 opportunity for a hearing. The notice shall direct the person
10 named in the notice to appear for hearing and show cause why
11 the person should not be barred from operating a motor vehicle
12 on the highways of this state. The notice shall meet the
13 requirements of section 17A.12 and shall be served in the
14 manner provided in that section. Service of notice on any
15 nonresident of this state may be made in the same manner as
16 provided in sections 321.498 through 321.506. A peace officer
17 stopping a person for whom a notice to appear for hearing has
18 been issued under the provisions of this section may
19 personally serve the notice upon forms approved by the
20 department to satisfy the notice requirements of this section.
21 A peace officer may confiscate the motor vehicle license of a
22 person if the license has been revoked or has been suspended
23 subsequent to a hearing and the person has not forwarded the
24 motor vehicle license to the department as required.
25 2. The hearing shall be conducted as provided in section
26 17A.12 before the department in the county where the alleged
27 events occurred, unless the director and the person agree that
28 the hearing may be held by telephone conference at the
29 discretion of the agency conducting the hearing. The hearing
30 shall be recorded and its scope shall be limited to the issue
31 of whether the person notified is a habitual offender.
32 3. An abstract certified by the director of transportation
33 may be admitted as evidence as provided in section 622.43, at
34 the hearing, and shall be prima facie evidence that the person
35 named in the abstract was duly convicted by the court in which

1 the conviction or holding was made of each offense shown by
2 the abstract. If the person named in the abstract denies
3 conviction of any of the relevant convictions contained in the
4 abstract, the person shall have the burden of proving that the
5 conviction is untrue. For purposes of this subsection, a
6 conviction is relevant if it is for one of the offenses listed
7 in section 321.555.

8 4. If the department finds that the person is not the same
9 person named in the abstract, or otherwise concludes that the
10 person is not a habitual offender as provided in section
11 321.555, the department shall issue a decision dismissing the
12 proceedings. If the department's findings and conclusions are
13 that the person is a habitual offender, the department shall
14 issue an order prohibiting the person from operating a motor
15 vehicle on the highways of this state for the period specified
16 in section 321.560. If a person is found to be a habitual
17 offender, the person shall surrender all licenses or permits
18 to operate a motor vehicle in this state to the department.

19 Sec. 2. Section 321.560, Code 1995, is amended to read as
20 follows:

21 321.560 BARRED FOR SIX YEARS.

22 A license to operate a motor vehicle in this state shall
23 not be issued to any person declared to be ~~an~~ a habitual
24 offender under section 321.555, subsection 1 for a period of
25 not less than two years nor more than six years from the date
26 of ~~judgment-as-ordered-by-the-court~~ the final decision of the
27 department under section 17A.19 or the date on which the
28 district court upholds the final decision of the department,
29 whichever occurs later. A license to operate a motor vehicle
30 in this state shall not be issued to any person declared to be
31 ~~an~~ a habitual offender under section 321.555, subsection 2,
32 for a period of one year from the date of judgment the final
33 decision of the department under section 17A.19 or the date on
34 which the district court upholds the final decision of the
35 department, whichever occurs later. The department shall

1 adopt rules under chapter 17A which establish a point system
2 which shall be used to determine the period for which a person
3 who is declared to be a habitual offender under section
4 321.555, subsection 1, shall not be issued a license.

5 Sec. 3. Section 321.561, Code 1995, is amended to read as
6 follows:

7 321.561 PUNISHMENT FOR VIOLATION.

8 It shall be unlawful for any person ~~convicted-as-an~~ found
9 to be a habitual offender to operate any motor vehicle in this
10 state during the period of time specified in section 321.560.
11 ~~This-conviction-shall-constitute~~ A person violating this
12 section commits an aggravated misdemeanor.

13 Sec. 4. Section 331.756, subsection 58, Code 1995, is
14 amended by striking the subsection.

15 Sec. 5. Section 602.8102, subsection 52, Code 1995, is
16 amended by striking the subsection.

17 Sec. 6. Section 602.8106, subsection 1, paragraph a, Code
18 1995, is amended to read as follows:

19 a. Except as otherwise provided in paragraphs "b" and "c",
20 for filing and docketing a criminal case to be paid by the
21 county or city which has the duty to prosecute the criminal
22 action, payable as provided in section 602.8109, thirty
23 dollars. When judgment is rendered against the defendant,
24 costs collected from the defendant shall be paid to the county
25 or city which has the duty to prosecute the criminal action to
26 the extent necessary for reimbursement for fees paid.

27 However, the fees which are payable by the county to the clerk
28 of the district court for services rendered in criminal
29 actions prosecuted under state law ~~and-in-habitual-offender~~
30 ~~actions-pursuant-to-section-321-556~~, and the court costs taxed
31 in connection with the trial of those actions or appeals from
32 the judgments in those actions are waived.

33 Sec. 7. REPEAL. Sections 321.557, 321.558, and 321.559,
34 Code 1995, are repealed.

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EXPLANATION

1 This bill provides for the administrative determination by
2 the department of transportation of whether a person's license
3 is to be barred for being a habitual offender. Currently the
4 determinations of whether a person is to be declared a
5 habitual offender are made by the court. Under the bill, the
6 administrative hearings are to be conducted in the same manner
7 as contested case hearings under chapter 17A, although
8 provision is made for telephone hearings if the person who is
9 the subject of the hearing and the department agree. Service
10 is to be made in the same manner as in other administrative
11 hearings, except that a peace officer who has stopped a person
12 for another reason may serve the person with the notice on
13 forms to be developed by the department. Service on
14 nonresidents of this state may be made in the same manner as
15 other actions by the department against nonresidents. If a
16 person is found to be a habitual offender under section
17 321.555, subsection 1, for commission of three offenses of
18 vehicular manslaughter, operating while intoxicated, driving
19 while suspended, revoked, or barred, a felony vehicle offense,
20 or failure to stop and leave information within a six-year
21 period, the person's license will be barred for no less than
22 two and no more than six years from the date on which the
23 department's decision becomes final. If a person is found to
24 be a habitual offender under section 321.555, subsection 2,
25 for the commission of six reportable traffic or license
26 offenses within a two-year period, the person's license is to
27 be barred for one year. The department's decision is
28 considered final by the latter of either the date of the
29 agency's decision or the date on which the agency's decision
30 is affirmed by the court. The department is to adopt rules
31 establishing a point system which is to be used to determine
32 the length of time for which the person is to be barred from
33 possessing a license to operate a motor vehicle in this state
34 if the person is found to be a habitual offender and the
35 person's license is to be barred for at least two, but not

S.F. _____ H.F. _____

1 more than six years.

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SENATE FILE 358

AN ACT

RELATING TO CERTAIN OFFENDERS OF THE MOTOR VEHICLE LAWS, BY PROVIDING FOR AN ADMINISTRATIVE ADJUDICATION OF THE HABITUAL OFFENDER STATUS, PROVIDING FOR A YOUTHFUL OFFENDER SUBSTANCE ABUSE AWARENESS PROGRAM, REQUIRING IGNITION INTERLOCK DEVICES FOR TEMPORARY RESTRICTED LICENSES, PROVIDING PENALTIES, AND PROVIDING FOR THE PAYMENT OF FEES.

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

Section 1. Section 321.215, subsection 2, unnumbered paragraph 1, Code 1995, is amended to read as follows:

Upon conviction and the suspension or revocation of a person's motor vehicle license under section 321.209, subsection 5, 6, or 8; 321.210; 321.210A; or 321.513; or upon the denial of issuance of a motor vehicle license under section 321.560, based solely on offenses enumerated in section 321.555, subsection 1, paragraph "c", or section 321.555, subsection 2, and upon the denial by the director of an application for a temporary restricted license, a person may apply to the district court having jurisdiction for the residence of the person for a temporary restricted permit to operate a motor vehicle for the limited purpose or purposes specified in subsection 1. The application may be granted only if all of the following criteria are satisfied:

Sec. 2. Section 321.556, Code 1995, is amended by striking the section and inserting in lieu thereof the following:

321.556 NOTICE AND HEARING -- FINDINGS AND ORDER.

1. If, upon review of the record of convictions of any person, the department determines that the person appears to be a habitual offender, the department shall immediately notify the person in writing and afford the licensee an opportunity for a hearing. The notice shall direct the person

named in the notice to appear for hearing and show cause why the person should not be barred from operating a motor vehicle on the highways of this state. The notice shall meet the requirements of section 17A.12 and shall be served in the manner provided in that section. Service of notice on any nonresident of this state may be made in the same manner as provided in sections 321.498 through 321.506. A peace officer stopping a person for whom a notice to appear for hearing has been issued under the provisions of this section may personally serve the notice upon forms approved by the department to satisfy the notice requirements of this section. A peace officer may confiscate the motor vehicle license of a person if the license has been revoked or has been suspended subsequent to a hearing and the person has not forwarded the motor vehicle license to the department as required.

2. The hearing shall be conducted as provided in section 17A.12 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 shall be recorded and its scope shall be limited to the issue of whether the person notified is a habitual offender.

3. An abstract certified by the director of transportation may be admitted as evidence as provided in section 622.43, at the hearing, and shall be prima facie evidence that the person named in the abstract was duly convicted by the court in which the conviction or holding was made of each offense shown by the abstract. If the person named in the abstract denies conviction of any of the relevant convictions contained in the abstract, the person shall have the burden of proving that the conviction is untrue. For purposes of this subsection, a conviction is relevant if it is for one of the offenses listed in section 321.555.

4. If the department finds that the person is not the same person named in the abstract, or otherwise concludes that the person is not a habitual offender as provided in section 321.555, the department shall issue a decision dismissing the proceedings. If the department's findings and conclusions are that the person is a habitual offender, the department shall issue an order prohibiting the person from operating a motor vehicle on the highways of this state for the period specified in section 321.560. If a person is found to be a habitual offender, the person shall surrender all licenses or permits to operate a motor vehicle in this state to the department. A person who is found to be an habitual offender may be assessed a fee by the department to cover the costs of the habitual offender proceedings. Fees assessed shall be paid before the person may be issued a license or permit to operate a motor vehicle in this state.

Sec. 3. Section 321.560, Code 1995, is amended to read as follows:

321.560 BARRED FOR SIX YEARS.

A license to operate a motor vehicle in this state shall not be issued to any person declared to be an habitual offender under section 321.555, subsection 1 for a period of not less than two years nor more than six years from the date of judgment-as-ordered-by-the-court the final decision of the department under section 17A.19 or the date on which the district court upholds the final decision of the department, whichever occurs later. However, a temporary restricted license may be issued to a person declared to be a habitual offender under section 321.555, subsection 1, paragraph "c", pursuant to section 321.215, subsection 2. A license to operate a motor vehicle in this state shall not be issued to any person declared to be an habitual offender under section 321.555, subsection 2, for a period of one year from the date of judgment the final decision of the department under section 17A.19 or the date on which the district court upholds the

final decision of the department, whichever occurs later. The department shall adopt rules under chapter 17A which establish a point system which shall be used to determine the period for which a person who is declared to be a habitual offender under section 321.555, subsection 1, shall not be issued a license.

Sec. 4. Section 321.561, Code 1995, is amended to read as follows:

321.561 PUNISHMENT FOR VIOLATION.

It shall be unlawful for any person ~~convicted-as-an~~ found to be a habitual offender to operate any motor vehicle in this state during the period of time specified in section 321.560 except for a habitual offender who has been granted a temporary restricted license pursuant to section 321.215, subsection 2. ~~This conviction shall constitute~~ A person violating this section commits an aggravated misdemeanor.

Sec. 5. Section 321J.4B, subsection 12, as enacted by 1995 Iowa Acts, Senate File 446, is amended to read as follows:

12. Operating a motor vehicle on a street or highway in this state in violation of an order of impoundment or immobilization is a serious misdemeanor. A motor vehicle which is subject to an order of impoundment or immobilization that is operated on a street or highway in this state during ~~the period of impoundment or immobilization in violation of the order~~ shall be seized and forfeited to the state under chapter 809.

Sec. 6. Section 321J.17, Code 1995, is amended to read as follows:

321J.17 CIVIL PENALTY -- DISPOSITION -- 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 two hundred dollars. The money collected by the department under this section shall be transmitted to the treasurer of state who shall deposit one-half of the money in the separate fund established in section 912.14 and one-half of the money shall

be deposited in the general fund of the state. A temporary ~~restricted-license-shall-not-be-issued-or-a~~ motor vehicle license or nonresident operating privilege shall not be reinstated until the civil penalty has been paid.

Sec. 7. Section 321J.20, Code 1995, is amended by adding the following new subsection:

NEW SUBSECTION. 6. Following the minimum period of ineligibility, a temporary restricted license under this section shall not be issued until such time as the applicant installs an ignition interlock device of a type approved by the commissioner of public safety on all motor vehicles owned or operated by the applicant, in accordance with section 321J.4, subsection 7. Installation of an ignition interlock device under this section shall be required for the period of time for which the temporary restricted license is issued, but no longer than one year, unless the court order under section 321J.4, subsection 7, provides for a longer period of time.

Sec. 8. NEW SECTION. 321J.24A YOUTHFUL OFFENDER SUBSTANCE ABUSE AWARENESS PROGRAM.

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

a. "Participant" means a person whose motor vehicle license or operating privilege has been revoked for a violation of section 321J.2A, if enacted by 1995 Iowa Acts, Senate File 446.

b. "Program" means a substance abuse awareness program provided under a contract entered into between the provider and the commission on substance abuse of the Iowa department of public health under chapter 125.

c. "Program coordinator" means a person assigned the duty to coordinate a participant's activities in a program by the program provider.

2. A substance abuse awareness program is established in each of the regions established by the commission on substance abuse. The program shall consist of an insight class and a

substance abuse evaluation, which shall be attended by the participant, to discuss issues related to the potential consequences of substance abuse. The parent or parents of the participant shall also be encouraged to participate in the program. The program provider shall consult with the participant or the parents of the participant in the program to determine the timing and appropriate level of participation for the participant and any participation by the participant's parents. The program may also include a supervised educational tour by the participant to any or all of the following:

a. A hospital or other emergency medical care facility which regularly receives victims of motor vehicle accidents, to observe treatment of appropriate victims of motor vehicle accidents involving intoxicated drivers, under the supervision of a registered nurse, physician, paramedic, or emergency medical technician.

b. A facility for the treatment of chemical substance abuse as defined in section 125.2, under the supervision of appropriately licensed medical personnel.

c. If approved by the state or county medical examiner, a morgue or a similar facility to receive appropriate educational material and instruction concerning damage caused by the consumption of alcohol or other drugs, under the supervision of the county medical examiner or deputy medical examiner.

3. If the program includes a tour, the program coordinator shall explain and discuss the experiences which may be encountered during the tour to the participant. If the program coordinator determines at any time before or during a tour that the tour may be traumatic or otherwise inappropriate for the participant, the program coordinator shall terminate the tour without prejudice to the participant.

4. Upon the revocation of the motor vehicle license or operating privileges of a person who is fourteen years of age

or older for a violation of section 321J.2A, if enacted, if the person has had no previous revocations under either section 321J.2 or section 321J.2A, if enacted, a person may participate in the substance abuse awareness program. The state department of transportation shall notify a potential program participant of the possibility and potential benefits of attending a program and shall notify a potential program participant of the availability programs which exist in the area in which the person resides. The state department of transportation shall consult with the Iowa department of public health to determine what programs are available in various areas of the state. The period of revocation for a person whose motor vehicle license or operating privilege has been revoked under section 321J.2A, if enacted, shall be reduced by fifty percent upon receipt by the state department of transportation of a certification by a program provider that the person has completed a program.

5. Program providers and facilities toured during the program are not liable for any civil damages resulting from injury to the participant, or civil damages caused by the participant during or from any activities related to a tour, except for willful or grossly negligent acts intended to, or reasonably expected to result in, such injury or damage.

6. The program provider shall determine fees to be paid by participants in the program. The program fees shall be paid on a sliding scale, based upon the ability of a participant and a participant's family to pay the fees, and shall not exceed one hundred dollars per participant. The program provider shall use the fees to pay all costs associated with the program.

Sec. 9. Section 331.756, subsection 58, Code 1995, is amended by striking the subsection.

Sec. 10. Section 602.8102, subsection 52, Code 1995, is amended by striking the subsection.

Sec. 11. Section 602.8106, subsection 1, paragraph a, Code 1995, is amended to read as follows:

a. Except as otherwise provided in paragraphs "b" and "c", for filing and docketing a criminal case to be paid by the county or city which has the duty to prosecute the criminal action, payable as provided in section 602.8109, thirty dollars. When judgment is rendered against the defendant, costs collected from the defendant shall be paid to the county or city which has the duty to prosecute the criminal action to the extent necessary for reimbursement for fees paid. However, the fees which are payable by the county to the clerk of the district court for services rendered in criminal actions prosecuted under state law ~~and-in-habitual-offender actions-pursuant-to-section-321-556~~, and the court costs taxed in connection with the trial of those actions or appeals from the judgments in those actions are waived.

Sec. 12. Section 321J.12, subsection 5, as enacted by 1995 Iowa Acts, Senate File 446, is amended to read as follows:

5. Upon certification, subject to penalty of 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.2A, 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 .02 or more but less than .10, the department shall revoke the person's motor vehicle license or operating privilege for a period of ~~thirty~~ sixty days if the person has had no revocations within the previous six years under section 321J.2A, and for a period of ninety days if the person has had one or more previous revocations within the previous six years under section 321J.2A.

Sec. 13. REPEAL. Sections 321.557, 321.558, and 321.559, Code 1995, are repealed.

Sec. 14. REPORT BY DEPARTMENT OF TRANSPORTATION. The department of transportation shall, by January 15, 1996, submit a report to the general assembly regarding the number of habitual offender contested cases which take place on or after the effective date of this Act. The report shall also contain information regarding the average length and cost of conducting the hearings.

LEONARD L. BOSWELL
President of the Senate

RON J. CORBETT
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 358, Seventy-sixth General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved May 2, 1995

TERRY E. BRANSTAD
Governor