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JUDICIARY

HOUSE FILE
BY KREIMAN

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

A BILL FOR

1 An Act decreasing the blood alcohol concentration level necessary
2 for the violation of operating a motor vehicle while
3 intoxicated, and making related changes.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 189

1 Section 1. Section 321J.2, Code 1997, is amended to read
2 as follows:

3 321J.2 OPERATING WHILE INTOXICATED UNDER-THE-INFLUENCE-OF
4 ALCOHOL-OR-A-DRUG-OR-WHILE-HAVING-AN-ALCOHOL-CONCENTRATION-OF
5 .10-OR-MORE (OWI).

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

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

11 b. While having an alcohol concentration as-defined-in
12 section-321J.1 of .10 .08 or more.

13 2. A person who violates this-section subsection 1
14 commits:

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

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

31 c. A class "D" felony for a third offense and each
32 subsequent offense, and shall be imprisoned in the county jail
33 for a determinate sentence of not more than one year but not
34 less than thirty days, or committed to the custody of the
35 director of the department of corrections, and assessed a fine

1 of not less than seven hundred fifty dollars. The minimum
2 jail term of thirty days cannot be suspended notwithstanding
3 section 901.5, subsection 3, and section 907.3, subsection 3,
4 however, the person sentenced shall receive credit for any
5 time the person was confined in a jail or detention facility
6 following arrest. If a person is committed to the custody of
7 the director of the department of corrections pursuant to this
8 paragraph and the sentence is suspended, the sentencing court
9 shall order that the offender serve the thirty-day minimum
10 term in the county jail. If the sentence which commits the
11 person to the custody of the director of the department of
12 corrections is later imposed by the court, all time served in
13 a county jail toward the thirty-day minimum term shall count
14 as time served toward the sentence which committed the person
15 to the custody of the director of the department of
16 corrections. A person convicted of a second or subsequent
17 offense shall be ordered to undergo a substance abuse
18 evaluation prior to sentencing. If a person is convicted of a
19 third or subsequent offense or if the evaluation recommends
20 treatment, the offender may be committed to the custody of the
21 director of the department of corrections, who, if the
22 sentence is not suspended, shall assign the person to a
23 facility pursuant to section 904.513 or the offender may be
24 committed to treatment in the community under the provisions
25 of section 907.6.

26 A minimum term of imprisonment in a county jail or
27 community-based correctional facility imposed on a person
28 convicted of a second or subsequent offense under paragraph
29 "b" or "c" shall be served on consecutive days. However, if
30 the sentencing court finds that service of the full minimum
31 term on consecutive days would work an undue hardship on the
32 person, or finds that sufficient jail space is not available
33 and is not reasonably expected to become available within four
34 months after sentencing to incarcerate the person serving the
35 minimum sentence on consecutive days, the court may order the

1 person to serve not less than forty-eight consecutive hours of
2 the minimum term and to perform a specified number of hours of
3 unpaid community service as deemed appropriate by the
4 sentencing court.

5 3. No conviction for, deferred judgment for, or plea of
6 guilty to, a violation of this section which occurred more
7 than six years prior to the date of the violation charged
8 shall be considered in determining that the violation charged
9 is a second, third, or subsequent offense. For the purpose of
10 determining if a violation charged is a second~~7-third7~~ or
11 subsequent offense, deferred judgments pursuant to section
12 907.3 for violations of this section and convictions or the
13 equivalent of deferred judgments for violations in any other
14 states under statutes substantially corresponding to this
15 section shall be counted as previous offenses. The courts
16 shall judicially notice the statutes of other states which
17 define offenses substantially equivalent to the one defined in
18 this section and can therefore be considered corresponding
19 statutes. Each previous violation on which conviction or
20 deferral of judgment was entered prior to the date of the
21 violation charged shall be considered and counted as a
22 separate previous offense.

23 4. A person shall not be convicted and sentenced for more
24 than one violation of this section for actions arising out of
25 the same event or occurrence, even if the violation-is-shown
26 to-have-been-committed-by-either-or-both-of-the-means
27 described event or occurrence involves more than one of the
28 conditions specified in subsection 1 in-the-same-occurrence.

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

34 6. This section does not apply to a person operating a
35 motor vehicle while under the influence of a drug if the

1 substance was prescribed for the person and was taken under
2 the prescription and in accordance with the directions of a
3 medical practitioner as defined in chapter 155A, if there is
4 no evidence of the consumption of alcohol and the medical
5 practitioner had not directed the person to refrain from
6 operating a motor vehicle.

7 7. In any prosecution under this section, evidence of the
8 results of analysis of a specimen of the defendant's blood,
9 breath, or urine is admissible upon proof of a proper
10 foundation.

11 The alcohol concentration established by the results of an
12 analysis of a specimen of the defendant's blood, breath, or
13 urine withdrawn within two hours after the defendant was
14 driving or in physical control of a motor vehicle is presumed
15 to be the alcohol concentration at the time of driving or
16 being in physical control of the motor vehicle.

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

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

35 Sec. 2. Section 321J.4, subsection 3, paragraph b,

1 subparagraph (2), Code 1997, is amended to read as follows:

2 (2) The defendant has not been convicted, since the date
3 of the revocation order, of any subsequent violations of
4 section 321J.2 or 123.46, or any comparable city or county
5 ordinance, and the defendant has not, since the date of the
6 revocation order, submitted to a chemical test under this
7 chapter that indicated an alcohol concentration ~~as-defined-in~~
8 ~~section-321J.1-of--10-or-more~~ equal to or in excess of the
9 level prohibited in section 321J.2, or refused to submit to
10 chemical testing under this chapter.

11 Sec. 3. Section 321J.6, subsection 1, paragraphs d and f,
12 Code 1997, are amended to read as follows:

13 d. The preliminary breath screening test was administered
14 and it indicated an alcohol concentration ~~as-defined-in~~ equal
15 to or in excess of the level prohibited by section 321J.1-of
16 ~~10-or-more~~ 321J.2.

17 f. The preliminary breath screening test was administered
18 and it indicated an alcohol concentration of less than ~~0.10~~
19 the level prohibited by section 321J.2, and the peace officer
20 has reasonable grounds to believe that the person was under
21 the influence of a drug other than alcohol, or a combination
22 of alcohol and another drug.

23 Sec. 4. Section 321J.8, subsection 2, Code 1997, is
24 amended to read as follows:

25 2. If the person submits to the test and the results
26 indicate an alcohol concentration ~~as-defined-in~~ equal to or in
27 excess of the level prohibited by section 321J.1-of--10-or
28 ~~more,--or-the-person-is-under-the-age-of-twenty-one-and-the~~
29 ~~results-indicate-an-alcohol-concentration-of--02-or-more,--but~~
30 ~~less-than--10~~ 321J.2 or 321J.2A, the person's motor vehicle
31 license or nonresident operating privilege will be revoked by
32 the department as required by and for the applicable period
33 specified under section 321J.12.

34 Sec. 5. Section 321J.12, subsections 1, 3, 4, 5, and 6,
35 Code 1997, are amended to read as follows:

1 1. Upon certification, subject to penalty for perjury, by
2 the peace officer that there existed reasonable grounds to
3 believe that the person had been operating a motor vehicle in
4 violation of section 321J.2, that there existed one or more of
5 the necessary conditions for chemical testing described in
6 section 321J.6, subsection 1, and that the person submitted to
7 chemical testing and the test results indicated an alcohol
8 concentration ~~as-defined-in~~ equal to or in excess of the level
9 prohibited by section ~~321J.1-of-10-or-more~~ 321J.2, the
10 department shall revoke the person's motor vehicle license or
11 nonresident operating privilege for the following periods of
12 time:

13 a. One hundred eighty days if the person has had no
14 revocation within the previous six years under this chapter.

15 b. One year if the person has had one or more previous
16 revocations within the previous six years under this chapter.

17 3. The effective date of the revocation shall be ten days
18 after the department has mailed notice of revocation to the
19 person by certified mail. The peace officer who requested or
20 directed the administration of the chemical test may, on
21 behalf of the department, serve immediate notice of revocation
22 on a person whose test results indicated an alcohol
23 concentration ~~of-10-or-more~~ equal to or in excess of the
24 level prohibited by section 321J.2.

25 4. If the peace officer serves that immediate notice, the
26 peace officer shall take the person's Iowa license or permit,
27 if any, and issue a temporary license valid only for ten days.
28 The peace officer shall immediately send the person's driver's
29 license to the department along with the officer's certificate
30 indicating that the test results indicated an alcohol
31 concentration ~~of-10-or-more~~ equal to or in excess of the
32 level prohibited by section 321J.2.

33 5. Upon certification, subject to penalty of perjury, by
34 the peace officer that there existed reasonable grounds to
35 believe that the person had been operating a motor vehicle in

1 violation of section 321J.2A, that there existed one or more
2 of the necessary conditions for chemical testing described in
3 section 321J.6, subsection 1, and that the person submitted to
4 chemical testing and the test results indicated an alcohol
5 concentration ~~as defined in section 321J.1 of .02 or more but~~
6 ~~less than .10~~ equal to or in excess of the level prohibited by
7 section 321J.2A, the department shall revoke the person's
8 motor vehicle license or operating privilege for a period of
9 sixty days if the person has had no revocations within the
10 previous six years under section 321J.2A, and for a period of
11 ninety days if the person has had one or more previous
12 revocations within the previous six years under section
13 321J.2A.

14 6. The results of a chemical test may not be used as the
15 basis for a revocation of a person's motor vehicle license or
16 nonresident operating privilege if the alcohol concentration
17 indicated by the chemical test minus the established margin of
18 error inherent in the device or method used to conduct the
19 chemical test does is not equal ~~an alcohol concentration of~~
20 ~~.10 or more for violations under~~ to or in excess of the level
21 prohibited by section 321J.2 or of .02 or more for violations
22 of section 321J.2A.

23 Sec. 6. Section 321J.13, subsection 2, Code 1997, is
24 amended to read as follows:

25 2. The department shall grant the person an opportunity to
26 be heard within forty-five days of receipt of a request for a
27 hearing if the request is made not later than ten days after
28 receipt of notice of revocation served pursuant to section
29 321J.9 or 321J.12. The hearing shall be before the department
30 in the county where the alleged events occurred, unless the
31 director and the person agree that the hearing may be held in
32 some other county, or the hearing may be held by telephone
33 conference at the discretion of the agency conducting the
34 hearing. The hearing may be recorded and its scope shall be
35 limited to the issues of whether a peace officer had

1 reasonable grounds to believe that the person was operating a
2 motor vehicle in violation of section 321J.2 or section
3 321J.2A and either of the following:

4 a. Whether the person refused to submit to the test or
5 tests.

6 b. Whether a test was administered and the test results
7 indicated an alcohol concentration ~~as defined in~~ equal to or
8 in excess of the level prohibited under section ~~321J.1 of .10~~
9 ~~or more or whether a test was administered and the test~~
10 ~~results indicated an alcohol concentration as defined in~~
11 ~~section 321J.1 of .02 or more pursuant to section~~ 321J.2 or
12 321J.2A.

13 Sec. 7. Section 707.6A, subsection 1, paragraph a, Code
14 1997, is amended to read as follows:

15 a. Operating a motor vehicle while ~~under the influence of~~
16 ~~alcohol or other drug or a combination of such substances or~~
17 ~~while having an alcohol concentration~~ intoxicated, as defined
18 in prohibited by section ~~321J.17 subsection 17 of .10 or more~~
19 321J.2. Upon a plea or verdict of guilty of a violation of
20 this paragraph, the court shall order the state department of
21 transportation to revoke the defendant's motor vehicle license
22 or nonresident operating privileges for a period of six years.
23 The defendant shall surrender to the court any Iowa license or
24 permit and the court shall forward ~~it~~ the license or permit to
25 the department with a copy of the revocation order.

26 Sec. 8. IMPLEMENTATION OF ACT. Section 25B.2, subsection
27 3, shall not apply to this Act.

28

EXPLANATION

29 This bill amends Code section 321J.2 by decreasing the
30 necessary concentration of blood alcohol level necessary for
31 the violation of operating a motor vehicle while intoxicated
32 from .10 to .08. Conforming amendments reflecting these
33 changes are made throughout chapter 321J, and in section
34 707.6A.

35 This bill may include a state mandate as defined in chapter

1 25B. This bill makes inapplicable section 25B.2, subsection
2 3, which would relieve a political subdivision from complying
3 with a state mandate if funding for the cost of the state
4 mandate is not provided or specified. Therefore, political
5 subdivisions are required to comply with any state mandate
6 included in this bill.

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