

FEB 20 1998
JUDICIARY

HOUSE FILE 2375
BY SUKUP

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

A BILL FOR

1 An Act creating an offense for operating while intoxicated for
2 persons driving a motor vehicle after taking certain
3 controlled substances, making penalties applicable, and making
4 related changes.

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

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HF 2375

1 Section 1. Section 321J.1, Code 1997, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 3A. "Controlled substance" means any
4 drug, substance, or compound as defined in chapter 124, or any
5 metabolite or derivative of the drug, substance, or compound.

6 Sec. 2. Section 321J.2, subsection 1, Code Supplement
7 1997, is amended to read as follows:

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

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

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

15 c. While any amount of a drug, substance, compound,
16 metabolite, or derivative is present in such person's blood or
17 urine resulting from the use of any controlled substance as
18 defined in chapter 124.

19 Sec. 3. Section 321J.2, subsections 7 and 8, Code
20 Supplement 1997, are amended to read as follows:

21 7. a. This section does not apply to a person operating a
22 motor vehicle while under the influence of a drug if the
23 substance was prescribed for the person and was taken under
24 the prescription and in accordance with the directions of a
25 medical practitioner as defined in chapter 155A, if there is
26 no evidence of the consumption of alcohol and the medical
27 practitioner had not directed the person to refrain from
28 operating a motor vehicle.

29 b. When charged with a violation of subsection 1,
30 paragraph "a" or "c", a person may assert, as an affirmative
31 defense, that the controlled substance or other drug present
32 in the person's blood or urine was prescribed for the person
33 and was taken in accordance with the directions of a
34 practitioner as defined in section 155A.3.

35 8. In any prosecution under this section, evidence of the

1 results of analysis of a specimen of the defendant's blood,
2 breath, or urine is admissible upon proof of a proper
3 foundation.

4 a. The alcohol concentration established by the results of
5 an analysis of a specimen of the defendant's blood, breath, or
6 urine withdrawn within two hours after the defendant was
7 driving or in physical control of a motor vehicle is presumed
8 to be the alcohol concentration at the time of driving or
9 being in physical control of the motor vehicle.

10 b. The presence of a controlled substance or other drug
11 established by the results of analysis of a specimen of the
12 defendant's blood or urine withdrawn within two hours after
13 the defendant was driving or in physical control of a motor
14 vehicle is presumed to show the presence of such controlled
15 substance or other drug in the defendant at the time of
16 driving or being in physical control of the motor vehicle.

17 Sec. 4. Section 321J.2, subsection 10, Code Supplement
18 1997, is amended to read as follows:

19 10. In any prosecution under this section, the results of
20 a chemical test may not be used to prove a violation of
21 paragraph-"b" of subsection 1 if the alcohol, controlled
22 substance, or other drug concentration indicated by the
23 chemical test minus the established margin of error inherent
24 in the device or method used to conduct the chemical test does
25 not equal an-alcohol-concentration-of--10-or-more or exceed
26 the level prohibited by subsection 1.

27 Sec. 5. Section 321J.5, subsection 2, Code 1997, is
28 amended to read as follows:

29 2. In any motor vehicle collision, the peace officer shall
30 assess the operator of each vehicle, and in conjunction with
31 the preliminary screening test administered pursuant to
32 subsection 1, determine whether each operator may have been
33 under the influence of a controlled substance, a drug other
34 than alcohol, or a combination of alcohol and another drug.
35 If the peace officer determines that there are reasonable

1 grounds to believe that an operator may have been under the
2 influence of a controlled substance, a drug other than
3 alcohol, or a combination of alcohol and another drug, the
4 peace officer shall request that the operator submit to a
5 blood or urine test pursuant to section 321J.6.

6 3. The peace officer shall use best efforts to obtain a
7 test required under subsection 2 as soon as practicable.

8 4. The results of this preliminary screening test may
9 shall be used for the purpose of deciding whether an arrest
10 should be made or whether to request a chemical test
11 authorized in this chapter, but shall not be used in any court
12 action except to prove that a chemical test was properly
13 requested of a person pursuant to this chapter.

14 Sec. 6. Section 321J.6, subsection 1, unnumbered paragraph
15 1, Code 1997, is amended to read as follows:

16 A person who operates a motor vehicle in this state under
17 circumstances which give reasonable grounds to believe that
18 the person has been operating a motor vehicle in violation of
19 section 321J.2 or 321J.2A is deemed to have given consent to
20 the withdrawal of specimens of the person's blood, breath, or
21 urine and to a chemical test or tests of the specimens for the
22 purpose of determining the alcohol concentration or presence
23 of a controlled substance or other drugs, subject to this
24 section. The withdrawal of the body substances and the test
25 or tests shall be administered at the written request of a
26 peace officer having reasonable grounds to believe that the
27 person was operating a motor vehicle in violation of section
28 321J.2 or 321J.2A, and if any of the following conditions
29 exist:

30 Sec. 7. Section 321J.6, subsection 1, paragraphs d and f,
31 Code 1997, are amended to read as follows:

32 d. The preliminary breath screening test was administered
33 and it indicated an alcohol concentration as-defined-in equal
34 to or in excess of the level prohibited by section 321J.1-of
35 10-or-more 321J.2.

1 f. The preliminary breath screening test was administered
2 and it indicated an alcohol concentration of less than 0.10
3 the level prohibited by section 321J.2, and the peace officer
4 has reasonable grounds to believe that the person was under
5 the influence of a controlled substance, a drug other than
6 alcohol, or a combination of alcohol and another drug.

7 Sec. 8. Section 321J.6, subsection 3, Code 1997, is
8 amended to read as follows:

9 3. Notwithstanding subsection 2, if the peace officer has
10 reasonable grounds to believe that the person was under the
11 influence of a controlled substance, a drug other than
12 alcohol, or a combination of alcohol and another drug, a blood
13 or urine test may shall be required even after ~~a blood or~~
14 ~~breath~~ another type of test has been administered. Section
15 321J.9 applies to a refusal to submit to a chemical test of
16 urine requested under this subsection. If a urine test has
17 already been administered, but the person refuses to consent
18 to a blood test, the peace officer shall obtain a warrant for
19 a blood test pursuant to section 321J.10.

20 Sec. 9. Section 321J.8, subsection 2, Code 1997, is
21 amended to read as follows:

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

32 Sec. 10. Section 321J.10, subsection 4, Code 1997, is
33 amended to read as follows:

34 4. a. Search warrants issued under this section shall
35 authorize and direct peace officers to secure the withdrawal

1 of blood specimens by medical personnel under section 321J.11.
2 Reasonable care shall be exercised to ensure the health and
3 safety of the persons from whom specimens are withdrawn in
4 execution of the warrants.

5 b. If a person from whom a specimen is to be withdrawn
6 objects to the withdrawal of blood, and the warrant may be
7 executed according to the following:

8 (1) If the person is capable of giving a specimen of
9 breath, and a direct breath testing instrument is readily
10 available, the warrant may be executed by the withdrawal of a
11 specimen of breath for chemical testing, unless the peace
12 officer has reasonable grounds to believe that the person was
13 under the influence of a controlled substance, a drug other
14 than alcohol, or a combination of alcohol and another drug.

15 (2) If the testimony in support of the warrant sets forth
16 facts and information that the peace officer has reasonable
17 grounds to believe that the person was under the influence of
18 a controlled substance, a drug other than alcohol, or a
19 combination of alcohol and another drug, a urine test may be
20 executed, if the person is capable of giving a urine sample
21 and materials for testing the urine sample are readily
22 available. If the peace officer has previously requested a
23 urine sample, but has sought the warrant to compel a blood
24 sample, a blood test may be taken in accordance with this
25 chapter.

26 Sec. 11. Section 321J.11, unnumbered paragraph 1, Code
27 1997, is amended to read as follows:

28 Only a licensed physician, licensed physician assistant as
29 defined in section 148C.1, medical technologist, or registered
30 nurse, acting at the request of a peace officer, may withdraw
31 a specimen of blood for the purpose of determining the alcohol
32 concentration or the presence of a controlled substance or
33 other drugs. However, any peace officer, using devices and
34 methods approved by the commissioner of public safety, may
35 take a specimen of a person's breath or urine for the purpose

1 of determining the alcohol concentration or the presence of a
2 controlled substance or other drugs. Only new equipment kept
3 under strictly sanitary and sterile conditions shall be used
4 for drawing blood.

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

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

21 a. One hundred eighty days if the person has had no
22 revocation under this chapter.

23 b. One year if the person has had a previous revocation
24 under this chapter.

25 3. The effective date of the revocation shall be ten days
26 after the department has mailed notice of revocation to the
27 person by certified mail. The peace officer who requested or
28 directed the administration of the chemical test may, on
29 behalf of the department, serve immediate notice of revocation
30 on a person whose test results indicated the presence of a
31 controlled substance or other drug, or an alcohol
32 concentration of--~~10~~-or-more equal to or in excess of the
33 level prohibited by section 321J.2, or a combination of
34 alcohol and another controlled substance or drug in violation
35 of section 321J.2.

1 4. If the peace officer serves that immediate notice, the
2 peace officer shall take the person's Iowa license or permit,
3 if any, and issue a temporary license valid only for ten days.
4 The peace officer shall immediately send the person's driver's
5 license to the department along with the officer's certificate
6 indicating that the test results indicated the presence of a
7 controlled substance or other drug, or an alcohol
8 concentration of--10-or-more equal to or in excess of the
9 level prohibited by section 321J.2.

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

19 Sec. 13. Section 321J.13, subsection 2, Code Supplement
20 1997, is amended to read as follows:

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

35 a. Whether the person refused to submit to the test or

1 tests.

2 b. Whether a test was administered and the test results
3 indicated an alcohol concentration as-defined-in equal to or
4 in excess of the level prohibited under section ~~321J.1-of-10~~
5 ~~or-more-or-whether-a-test-was-administered-and-the-test~~
6 ~~results-indicated-an-alcohol-concentration-as-defined-in~~
7 ~~section-321J.1-of-102-or-more-pursuant-to-section~~ 321J.2 or
8 321J.2A.

9 c. Whether a test was administered and the test results
10 indicated the presence of alcohol, a controlled substance or
11 other drug, or a combination of alcohol and another drug, in
12 violation of section 321J.2.

13 Sec. 14. Section 321J.15, Code 1997, is amended to read as
14 follows:

15 321J.15 EVIDENCE IN ANY ACTION.

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

28 Sec. 15. Section 321J.18, Code 1997, is amended to read as
29 follows:

30 321J.18 OTHER EVIDENCE.

31 This chapter does not limit the introduction of any
32 competent evidence bearing on the question of whether a person
33 was under the influence of an alcoholic beverage or a
34 controlled substance or other drug, including the results of
35 chemical tests of specimens of blood, breath, or urine

1 obtained more than two hours after the person was operating a
2 motor vehicle.

3 Sec. 16. IMPLEMENTATION OF ACT. Section 25B.2, subsection
4 3, shall not apply to this Act.

5 EXPLANATION

6 This bill amends Code section 321J.1 by adding a definition
7 for "controlled substance", as used in chapter 321J, to refer
8 to that term as it is used in Code chapter 124.

9 This bill amends Code section 321J.2 by adding an OWI
10 offense for a person who operates a motor vehicle after taking
11 any amount of controlled substance. Conforming amendments
12 reflecting this change are made throughout Code chapter 321J.

13 This bill further amends Code section 321J.2 by adding an
14 affirmative defense to OWI charges for prescribed medication
15 when a controlled substance or other drug violation is
16 charged. The bill also adds a legal presumption regarding
17 blood or urine specimens for controlled substance violations.

18 The bill also requires that a peace officer assess each
19 operator to determine whether one or more of the operators
20 involved in the collision may have been under the influence of
21 a drug other than alcohol, or a combination of alcohol and
22 another drug. If the peace officer determines this to be the
23 case, a blood or urine test shall be requested pursuant to
24 Code section 321J.6.

25 Code section 321J.6 is amended to require a peace officer
26 to administer a blood or urine test to a person the peace
27 officer reasonably believes may be under the influence of a
28 controlled substance, a drug other than alcohol, or a
29 combination of alcohol and another drug. If a urine test has
30 already been administered, but the person refuses to consent
31 to a blood test, the peace officer is required to request a
32 warrant pursuant to Code section 321J.10 to obtain the blood
33 sample.

34 Other technical changes are made throughout Code chapter
35 321J.

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

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