

FEB 14 1997
JUDICIARY

HOUSE FILE

246

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

A BILL FOR

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

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

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HF 246

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 that is listed in section 124.204
5 or 124.206, or any metabolite or derivative of the drug,
6 substance, or compound.

7 Sec. 2. Section 321J.2, Code 1997, is amended to read as
8 follows:

9 321J.2 OPERATING WHILE INTOXICATED UNDER-THE-INFLUENCE-OF
10 ALCOHOL-OR-A-DRUG-OR-WHILE-HAVING-AN-ALCOHOL-CONCENTRATION-OF
11 10-OR-MORE (OWI).

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

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

17 b. While having an alcohol concentration as-defined-in
18 section-321J.1 of .10 or more.

19 c. While any amount of a controlled substance is present
20 in the person, as measured in the person's blood or urine.

21 2. A person who violates this-section subsection 1
22 commits:

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

33 b. An aggravated misdemeanor for a second offense, and
34 shall be imprisoned in the county jail or community-based
35 correctional facility not less than seven days, which minimum

1 term cannot be suspended notwithstanding section 901.5,
2 subsection 3, and section 907.3, subsection 3, and assessed a
3 fine of not less than seven hundred fifty dollars.

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

34 A minimum term of imprisonment in a county jail or
35 community-based correctional facility imposed on a person

1 convicted of a second or subsequent offense under paragraph
2 "b" or "c" shall be served on consecutive days. However, if
3 the sentencing court finds that service of the full minimum
4 term on consecutive days would work an undue hardship on the
5 person, or finds that sufficient jail space is not available
6 and is not reasonably expected to become available within four
7 months after sentencing to incarcerate the person serving the
8 minimum sentence on consecutive days, the court may order the
9 person to serve not less than forty-eight consecutive hours of
10 the minimum term and to perform a specified number of hours of
11 unpaid community service as deemed appropriate by the
12 sentencing court.

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

31 4. A person shall not be convicted and sentenced for more
32 than one violation of this section for actions arising out of
33 the same event or occurrence, even if the violation-is-shown
34 to-have-been-committed-by-either-or-both-of-the-means
35 described event or occurrence involves more than one of the

1 conditions specified in subsection 1 in-the-same-occurrence.

2 5. The clerk of court shall immediately certify to the
3 department a true copy of each order entered with respect to
4 deferral of judgment, deferral of sentence or pronouncement of
5 judgment and sentence for a defendant under this section.

6 6. a. This section does not apply to a person operating a
7 motor vehicle while under the influence of a drug if the
8 substance was prescribed for the person and was taken under
9 the prescription and in accordance with the directions of a
10 medical practitioner as defined in chapter 155A, if there is
11 no evidence of the consumption of alcohol and the medical
12 practitioner had not directed the person to refrain from
13 operating a motor vehicle.

14 b. When charged with a violation of subsection 1,
15 paragraph "c", a person may assert, as an affirmative defense,
16 that the controlled substance present in the person's blood or
17 urine was prescribed for the person and was taken in
18 accordance with the directions of a practitioner as defined in
19 section 155A.3.

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

24 a. The alcohol concentration established by the results of
25 an analysis of a specimen of the defendant's blood, breath, or
26 urine withdrawn within two hours after the defendant was
27 driving or in physical control of a motor vehicle is presumed
28 to be the alcohol concentration at the time of driving or
29 being in physical control of the motor vehicle.

30 b. The presence of a controlled substance or other drug
31 established by the results of analysis of a specimen of the
32 defendant's blood or urine withdrawn within two hours after
33 the defendant was driving or in physical control of a motor
34 vehicle is presumed to show the presence of such controlled
35 substance or other drug in the defendant at the time of

1 driving or being in physical control of the motor vehicle.

2 8. The court shall order a defendant convicted of or
3 receiving a deferred judgment for a violation of this section
4 to make restitution, in an amount not to exceed two thousand
5 dollars, for damages resulting directly from the violation.
6 An amount paid pursuant to this restitution order shall be
7 credited toward any adverse judgment in a subsequent civil
8 proceeding arising from the same occurrence. However, other
9 than establishing a credit, a restitution proceeding pursuant
10 to this section shall not be given evidentiary or preclusive
11 effect in a subsequent civil proceeding arising from the same
12 occurrence.

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

21 Sec. 3. Section 321J.4, subsection 3, paragraph b,
22 subparagraph (2), Code 1997, is amended to read as follows:

23 (2) The defendant has not been convicted, since the date
24 of the revocation order, of any subsequent violations of
25 section 321J.2 or 123.46, or any comparable city or county
26 ordinance, and the defendant has not, since the date of the
27 revocation order, submitted to a chemical test under this
28 chapter that indicated the presence of a controlled substance,
29 a drug other than alcohol, a combination of alcohol and
30 another drug, or an alcohol concentration ~~as-defined-in~~
31 section-321J.1-of-.10-or-more in excess of the level
32 prohibited in section 321J.2, or refused to submit to chemical
33 testing under this chapter.

34 Sec. 4. Section 321J.6, subsection 1, paragraphs d and f,
35 Code 1997, are amended to read as follows:

1 d. The preliminary breath screening test was administered
2 and it indicated an alcohol concentration ~~as-defined-in~~ equal
3 to or in excess of the level prohibited by section 321J.1-of
4 ~~10-or-more~~ 321J.2.

5 f. The preliminary breath screening test was administered
6 and it indicated an alcohol concentration ~~of~~ less than ~~0-10~~
7 the level prohibited by section 321J.2, and the peace officer
8 has reasonable grounds to believe that the person was under
9 the influence of a controlled substance, a drug other than
10 alcohol, or a combination of alcohol and another drug.

11 Sec. 5. Section 321J.8, subsection 2, Code 1997, is
12 amended to read as follows:

13 2. If the person submits to the test and the results
14 indicate the presence of a controlled substance or other drug,
15 or an alcohol concentration as-defined-in equal to or in
16 excess of the level prohibited by section 321J.1-of-10-or
17 ~~more,-or-the-person-is-under-the-age-of-twenty-one-and-the~~
18 ~~results-indicate-an-alcohol-concentration-of-.02-or-more,-but~~
19 ~~less-than-10~~ 321J.2 or 321J.2A, the person's motor vehicle
20 license or nonresident operating privilege will be revoked by
21 the department as required by and for the applicable period
22 specified under section 321J.12.

23 Sec. 6. Section 321J.10, subsection 4, Code 1997, is
24 amended to read as follows:

25 4. a. Search warrants issued under this section shall
26 authorize and direct peace officers to secure the withdrawal
27 of blood specimens by medical personnel under section 321J.11.
28 Reasonable care shall be exercised to ensure the health and
29 safety of the persons from whom specimens are withdrawn in
30 execution of the warrants.

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

34 (1) ~~the~~ The person is capable of giving a specimen of
35 breath, and a direct breath testing instrument is readily

1 available, the warrant may be executed by the withdrawal of a
2 specimen of breath for chemical testing.

3 (2) If the testimony in support of the warrant sets forth
4 facts and information that the peace officer has reasonable
5 grounds to believe that the person was under the influence of
6 a controlled substance, a drug other than alcohol, or a
7 combination of alcohol and another drug, a urine test may be
8 executed, if the person is capable of giving a urine sample
9 and materials for testing the urine sample are readily
10 available.

11 Sec. 7. Section 321J.12, subsections 1, 3, 4, and 6, Code
12 1997, are amended to read as follows:

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

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

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

31 3. The effective date of the revocation shall be ten days
32 after the department has mailed notice of revocation to the
33 person by certified mail. The peace officer who requested or
34 directed the administration of the chemical test may, on
35 behalf of the department, serve immediate notice of revocation

1 on a person whose test results indicated the presence of a
2 controlled substance or other drug, or an alcohol
3 concentration of ~~10~~ or more equal to or in excess of the
4 level prohibited by section 321J.2, or a combination of
5 alcohol and another drug in violation of 321J.2.

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

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

24 Sec. 8. Section 321J.13, subsection 2, Code 1997, is
25 amended to read as follows:

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

1 limited to the issues of whether a peace officer had
2 reasonable grounds to believe that the person was operating a
3 motor vehicle in violation of section 321J.2 or section
4 321J.2A and either one or more of the following:

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

7 b. Whether a test was administered and the test results
8 indicated an alcohol concentration ~~as defined in~~ equal to or
9 in excess of the level prohibited under section 321J.1 of 10
10 ~~or more or whether a test was administered and the test~~
11 ~~results indicated an alcohol concentration as defined in~~
12 ~~section 321J.1 of 102 or more pursuant to section~~ 321J.2 or
13 321J.2A.

14 c. Whether a test was administered and the test results
15 indicated the presence of alcohol, a controlled substance or
16 other drug, or a combination of both alcohol and a drug, in
17 violation of section 321J.2.

18 Sec. 9. Section 707.6A, subsection 1, paragraph a, Code
19 1997, is amended to read as follows:

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

31 Sec. 10. IMPLEMENTATION OF ACT. Section 25B.2, subsection
32 3, shall not apply to this Act.

33 EXPLANATION

34 This bill amends Code section 321J.1 by adding a definition
35 for "controlled substance", as used in chapter 321J, to refer

1 to drugs listed under schedule I or II of chapter 124.

2 This bill amends Code section 321J.2 by adding an OWI
3 offense for a person who operates a motor vehicle after taking
4 any amount of controlled substance listed in schedule I or II.
5 Conforming amendments reflecting this change are made
6 throughout chapter 321J, and in Code section 707.6A.

7 This bill further amends Code section 321J.2 by adding an
8 affirmative defense to OWI charges for prescribed medication
9 when a controlled substance violation is charged. The bill
10 also adds a legal presumption regarding blood or urine
11 specimens for controlled substance violations.

12 This bill may include a state mandate as defined in chapter
13 25B. This bill makes inapplicable section 25B.2, which would
14 relieve a political subdivision from complying with a state
15 mandate if funding for the cost of the state mandate is not
16 provided or specified. Therefore, political subdivisions are
17 required to comply with any state mandate included in this
18 bill.

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