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FILED MAR 2 1998

SENATE FILE 2391

BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 2165)

Passed Senate, Date 3-11-98 ^(P. 628) Passed House, Date 3/31/98 ^(P. 1106)
 Vote: Ayes 48 Nays 0 Vote: Ayes 96 Nays 3
 Approved April 22, 1998

A BILL FOR

1 An Act allowing probation for some operating-while-intoxicated
 2 offenders after service of a mandatory minimum sentence,
 3 permitting licensed substance abuse agencies to offer a
 4 drinking drivers course, permitting a .15 blood alcohol level
 5 to control the penalties applicable to an offender regardless
 6 of the margin of error associated with the test device,
 7 requiring the deletion from motor vehicle records after twelve
 8 years of certain youth license revocations for alcohol
 9 violations, and providing an effective date.
 10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
 11

SENATE FILE 2391

S-5138

- 1 Amend Senate File 2391 as follows:
- 2 1. By striking page 1, line 31, through page 3,
- 3 line 16.
- 4 2. Title page, lines 3 and 4, by striking the
- 5 following: "permitting licensed substance abuse
- 6 agencies to offer a drinking drivers course,".
- 7 3. By renumbering as necessary.

By JOHN P. KIBBIE
 MARY LOU FREEMAN

adopted 3/11/98 (P. 628)

S-5138 FILED MARCH 4, 1998

S.F. 2391

1 Section 1. Section 321.12, subsection 4, Code Supplement
2 1997, is amended to read as follows:

3 4. The director shall not destroy any operating records
4 pertaining to arrests or convictions for operating while
5 intoxicated, in violation of section 321J.2 or operating
6 records pertaining to revocations for violations of section
7 321J.2A, except that a conviction or revocation under section
8 321J.2 or 321J.2A shall be deleted from the operating records
9 twelve years after the date of conviction or the effective
10 date of revocation.

11 Sec. 2. Section 321J.2, subsection 3, paragraph a,
12 unnumbered paragraph 1, Code Supplement 1997, is amended to
13 read as follows:

14 Notwithstanding the provisions of sections 901.5 and 907.3,
15 the court shall not defer judgment or sentencing, or suspend
16 execution of any ~~part-of-the~~ mandatory minimum sentence
17 applicable to the defendant under subsection 2, and shall not
18 suspend execution of any other part of a sentence imposed
19 pursuant to subsection 2, if any of the following apply:

20 Sec. 3. Section 321J.2, subsection 3, paragraph a,
21 subparagraph (1), Code Supplement 1997, is amended to read as
22 follows:

23 (1) If the defendant's alcohol concentration established
24 by the results of an analysis of a specimen of the defendant's
25 blood, breath, or urine withdrawn in accordance with this
26 chapter exceeds .15, regardless of whether or not the alcohol
27 concentration indicated by the chemical test minus the
28 established margin of error inherent in the device or method
29 used to conduct the test equals an alcohol concentration of
30 .15 or more.

31 Sec. 4. Section 321J.22, subsection 2, Code Supplement
32 1997, is amended to read as follows:

33 2. a. The course provided according to this section shall
34 be offered on a regular basis at each community college as
35 defined in section 260C.2.

1 b. Enrollment in the courses is not limited to persons
2 ordered to enroll, attend, and successfully complete the
3 course required under sections 321J.2 and 321J.17, subsection
4 2.

5 c. The course required by this ~~section~~ subsection shall be
6 taught by the community colleges under the department of
7 education and approved by the department.

8 d. The department of education shall establish reasonable
9 fees to defray the expense of obtaining classroom space,
10 instructor salaries, and class materials.

11 2A. The course provided according to this section may also
12 be offered by a substance abuse agency licensed pursuant to
13 chapter 125.

14 a. Enrollment in the course is not limited to persons
15 required to enroll, attend, and successfully complete a course
16 for drinking drivers pursuant to this chapter.

17 b. The course provided according to this subsection shall
18 be taught by qualified staff of the licensed substance abuse
19 agency who are trained in the state-approved curriculum.

20 c. The division of substance abuse of the department of
21 public health, may establish reasonable fees to defray the
22 expenses associated with offering the course.

23 2B. A person shall not be denied enrollment in a course by
24 reason-of ~~for~~ drinking drivers that is required by a court
25 solely due to the person's indigency.

26 Sec. 5. Section 321J.22, subsections 4 and 5, Code
27 Supplement 1997, is amended to read as follows:

28 4. a. The department of education shall prepare a list of
29 the locations of the courses taught under this section, the
30 dates and times taught, the procedure for enrollment, and the
31 schedule of course fees. The list shall be kept current and a
32 copy of the list shall be sent to each court having
33 jurisdiction over offenses provided in this chapter.

34 5. b. The department of education shall maintain
35 enrollment, attendance, successful and ~~nonsuccessful~~

1 unsuccessful completion data on the persons ordered to enroll,
2 attend, and successfully complete a course for drinking
3 drivers. This data shall be forwarded to the court.

4 5. a. Licensed substance abuse agencies offering courses
5 pursuant to this section shall prepare a list of the locations
6 of the courses, the dates and times for the courses, the
7 procedure for enrollment, and the schedule of course fees.
8 The list shall be updated periodically, and a copy of each
9 updated list shall be sent to district courts in the same area
10 as the substance abuse agency.

11 b. Each licensed substance abuse agency offering courses
12 under this section shall maintain attendance, successful and
13 unsuccessful completion data on the persons ordered to enroll,
14 attend, and successfully complete a course for drinking
15 drivers. This data shall be forwarded to the appropriate
16 district court.

17 Sec. 6. Section 907.3, subsection 1, paragraph g,
18 subparagraph (1), Code Supplement 1997, is amended to read as
19 follows:

20 (1) If the defendant's alcohol concentration established
21 by the results of an analysis of a specimen of the defendant's
22 blood, breath, or urine withdrawn in accordance with chapter
23 321J exceeds .15, regardless of whether or not the alcohol
24 concentration indicated by the chemical test minus the
25 established margin of error inherent in the device or method
26 used to conduct the test equals an alcohol concentration of
27 .15 or more.

28 Sec. 7. Section 907.3, subsection 2, paragraph c,
29 subparagraph (1), Code Supplement 1997, is amended to read as
30 follows:

31 (1) If the defendant's alcohol concentration established
32 by the results of an analysis of a specimen of the defendant's
33 blood, breath, or urine withdrawn in accordance with chapter
34 321J exceeds .15, regardless of whether or not the alcohol
35 concentration indicated by the chemical test minus the

1 established margin of error inherent in the device or method
2 used to conduct the test equals an alcohol concentration of
3 .15 or more.

4 Sec. 8. Section 907.3, subsection 3, paragraph c,
5 unnumbered paragraph 1, Code Supplement 1997, is amended to
6 read as follows:

7 A mandatory minimum sentence imposed pursuant to a
8 violation of section 321J.2, subsection 1; furthermore, the
9 court shall not suspend any part of a sentence imposed
10 pursuant to section 321J.2, subsection 2, beyond the mandatory
11 minimum if any of the following apply:

12 Sec. 9. Section 907.3, subsection 3, paragraph c,
13 subparagraph (1), Code Supplement 1997, is amended to read as
14 follows:

15 (1) If the defendant's alcohol concentration established
16 by the results of an analysis of a specimen of the defendant's
17 blood, breath, or urine withdrawn in accordance with chapter
18 321J exceeds .15, regardless of whether or not the alcohol
19 concentration indicated by the chemical test minus the
20 established margin of error inherent in the device or method
21 used to conduct the test equals an alcohol concentration of
22 .15 or more.

23 Sec. 10. EFFECTIVE DATE. This Act, being deemed of
24 immediate importance, takes effect upon enactment.

25 EXPLANATION

26 This bill makes amendments to certain Code sections
27 affected by 1997 legislation pertain to operating-while-
28 intoxicated (OWI) offenses.

29 The bill amends Code section 321.12, so that revocations
30 under Code section 321J.2A will be deleted from motor vehicle
31 records according to the same rules that apply to OWI
32 violations under Code section 321J.2.

33 The bill amends Code section 321J.2 to expressly state that
34 a mandatory minimum sentence imposed under the section cannot
35 be suspended, and that a sentence beyond the mandatory minimum

1 cannot be suspended in certain cases. This change, in
2 conjunction with a related change to Code section 907.3,
3 subsection 3, will permit the court to suspend execution of a
4 sentence for certain less serious offenders, and impose a
5 period of probation after service of the mandatory minimum
6 sentence.

7 The bill amends Code section 321J.2 and all subsections of
8 Code section 907.3 to state that a defendant who tests .15 or
9 higher shall be subject to the conditions applicable to
10 persons registering .15 or higher, regardless of the standard
11 of error associated with the test device.

12 The bill amends Code section 321J.22 to provide that
13 substance abuse agencies may offer the course for drinking
14 drivers regulated under that Code section, in addition to
15 community colleges, and that the substance abuse division of
16 the department of public health may set fees and the agencies
17 shall keep records and report to the court on the status of
18 offenders enrolling in the course, on a comparable basis to
19 the community colleges.

20 The bill contains an immediate effective date.

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SENATE FILE 2391
FISCAL NOTE

The estimate for ~~Amendment~~ H-8796 to Senate File 2391 is hereby submit as a fiscal note pursuant to Joint Rule 17 and as a correctional impact statement pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Amendment H-8796 to SF 2391 adds various items related to drug-related offenses. Division I of the amendment is the original language of SF 2391. Division II incorporates the provisions of SF 2369 (Drugged Driving). Division III contains the provisions of Sections 1 and 2 of HF 2060 (Enhanced Criminal Penalties for Drug Possession). Division IV allows for denial of certain state and federal benefits to drug traffickers. Division V would impose mandatory minimum sentences for methamphetamine offenses. Division VI contains language regarding individual privacy in the collection of urine.

ASSUMPTIONS

Division I

1. Sufficient information is not available to determine the impact of SF 2391 provisions relating to charges for second and subsequent OWI offenses. Also, information is not available to assess the impact of standardizing the ramifications of a blood alcohol concentration higher than .15, regardless of the standard of error associated with the testing device.
2. The Department of Public Health will establish rules regarding licensing programs and program fees. Associated costs are estimated to be \$14,000 in FY 1999.

Division II

1. Current law provides for arrest of individuals under the influence of drugs.
2. There would be no increase in the number of OWI arrests. If the preliminary screening test provisions provide increased convictions, the correctional system could be impacted, although this cannot be determined with current data.
3. The Department of Public Safety would train and certify 14 troopers as Drug Recognition Examiners at a cost of \$2,000 per trooper.

Division III

1. Charge, conviction, and sentencing patterns will not change over the projections period. Prisoner length of stay, revocation rates, and other corrections policies and practices will not change over the projections

-2-

period. A lag effect of six months is assumed from the law's effective date to the first entry of affected offenders into the correctional system.

2. An estimated 232 persons will receive enhanced penalties annually. They are: 108 who have a prior conviction for possession of a controlled substance other than marijuana, 32 who have two or more prior convictions for possession of a controlled substance other than marijuana, 56 for possession of marijuana with one prior conviction, and 36 for possession of marijuana with two or more prior convictions.
3. The marginal cost to add one additional inmate to the prison system is \$12 per day.
4. It is estimated that one case per year will receive the \$2,500 fine increase.

CORRECTIONAL IMPACT

Divisions I, II, IV, and VI are not expected to have a significant correctional impact.

The impact of Division V cannot be determined.

Prison growth as a result of Division III would occur as follows: 10 in FY 1999, 21 in FY 2000, and 23 in FY 2001.

FISCAL IMPACT

Divisions I, II, IV, VI are not expected to have a significant fiscal impact.

The impact of Division V cannot be determined.

Division III would have an estimated fiscal impact of \$44,000 in FY 1999, \$92,000 in FY 2000, and \$101,000 in FY 2001.

SOURCES

Criminal and Juvenile Justice Planning Division,
Department of Human Rights
Department of Public Health
Department of Public Safety
Department of Transportation
Iowa Law Enforcement Academy
Department of Corrections

(LSB 4198sv.2, VMT)

FILED MARCH 31, 1998

BY DENNIS PROUTY, FISCAL DIRECTOR

**SENATE FILE 2391
FISCAL NOTE**

The estimate for Senate File 2391 is hereby submitted as a fiscal note pursuant to Joint Rule 17 and as a correctional impact statement pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 2391 makes changes relating to operating-while-intoxicated (OWI) offenses including deletion of revocations from motor vehicle records, suspension of sentences, standard of error associated with test devices, and drinking drivers' courses.

ASSUMPTIONS

1. Sufficient information is not available to determine the impact of SF 2391 provisions relating to charges for second and subsequent OWI offenses. Also, information is not available to assess the impact of standardizing the ramifications of a blood alcohol concentration higher than .15, regardless of the standard of error associated with the testing device.
2. The Department of Public Health will establish rules regarding licensing programs and program fees. Associated costs are estimated to be \$14,000 in FY 1999.

CORRECTIONAL IMPACT

The correctional impact of SF 2391 cannot be determined. The actual impact is not expected to be significant.

FISCAL IMPACT

Senate File 2391 is not expected to have a significant fiscal impact.

SOURCES

Criminal and Juvenile Justice Planning Division,
Department of Human Rights
Department of Corrections
Department of Public Health

(LSB 4198av, VMT)

FILED MARCH 16, 1998

BY DENNIS PROUTY, FISCAL DIRECTOR

H-3/12/98 Judiciary
H-3/19/98 Do Pass
H-3/26/98 ~~OFFICIAL~~ BUSINESS CALENDAR

SENATE FILE **2391**
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 2165)

(AS AMENDED AND PASSED BY THE SENATE MARCH 11, 1998)

* - Language Stricken by the Senate

Passed Senate, Date 4-6-98 (p. 1080) Passed House, Date 3/31/98 (p. 1106)
Vote: Ayes 44 Nays 2 Vote: Ayes 96 Nays 3

Approved April 22, 1998 Passed 4-8-98
vote 96-1 (p. 1397)

A BILL FOR

1 An Act allowing probation for some operating-while-intoxicated
2 offenders after service of a mandatory minimum sentence,
3 permitting a .15 blood alcohol level to control the penalties
4 applicable to an offender regardless of the margin of error
5 associated with the test device, requiring the deletion from
6 motor vehicle records after twelve years of certain youth
7 license revocations for alcohol violations, and providing an
8 effective date.

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

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S.F. 2391

1 Section 1. Section 321.12, subsection 4, Code Supplement
2 1997, is amended to read as follows:

3 4. The director shall not destroy any operating records
4 pertaining to arrests or convictions for operating while
5 intoxicated, in violation of section 321J.2 or operating
6 records pertaining to revocations for violations of section
7 321J.2A, except that a conviction or revocation under section
8 321J.2 or 321J.2A shall be deleted from the operating records
9 twelve years after the date of conviction or the effective
10 date of revocation.

11 Sec. 2. Section 321J.2, subsection 3, paragraph a,
12 unnumbered paragraph 1, Code Supplement 1997, is amended to
13 read as follows:

14 Notwithstanding the provisions of sections 901.5 and 907.3,
15 the court shall not defer judgment or sentencing, or suspend
16 execution of any ~~part-of-the~~ mandatory minimum sentence
17 applicable to the defendant under subsection 2, and shall not
18 suspend execution of any other part of a sentence imposed
19 pursuant to subsection 2, if any of the following apply:

20 Sec. 3. Section 321J.2, subsection 3, paragraph a,
21 subparagraph (1), Code Supplement 1997, is amended to read as
22 follows:

23 (1) If the defendant's alcohol concentration established
24 by the results of an analysis of a specimen of the defendant's
25 blood, breath, or urine withdrawn in accordance with this
26 chapter exceeds .15, regardless of whether or not the alcohol
27 concentration indicated by the chemical test minus the
28 established margin of error inherent in the device or method
29 used to conduct the test equals an alcohol concentration of
30 .15 or more.

* 31 Sec. 4. Section 907.3, subsection 1, paragraph g,
32 subparagraph (1), Code Supplement 1997, is amended to read as
33 follows:

34 (1) If the defendant's alcohol concentration established
35 by the results of an analysis of a specimen of the defendant's

1 blood, breath, or urine withdrawn in accordance with chapter
2 321J exceeds .15, regardless of whether or not the alcohol
3 concentration indicated by the chemical test minus the
4 established margin of error inherent in the device or method
5 used to conduct the test equals an alcohol concentration of
6 .15 or more.

7 Sec. 5. Section 907.3, subsection 2, paragraph c,
8 subparagraph (1), Code Supplement 1997, is amended to read as
9 follows:

10 (1) If the defendant's alcohol concentration established
11 by the results of an analysis of a specimen of the defendant's
12 blood, breath, or urine withdrawn in accordance with chapter
13 321J exceeds .15, regardless of whether or not the alcohol
14 concentration indicated by the chemical test minus the
15 established margin of error inherent in the device or method
16 used to conduct the test equals an alcohol concentration of
17 .15 or more.

18 Sec. 6. Section 907.3, subsection 3, paragraph c,
19 unnumbered paragraph 1, Code Supplement 1997, is amended to
20 read as follows:

21 A mandatory minimum sentence imposed pursuant to a
22 violation of section 321J.2, subsection 1; furthermore, the
23 court shall not suspend any part of a sentence imposed
24 pursuant to section 321J.2, subsection 2, beyond the mandatory
25 minimum if any of the following apply:

26 Sec. 7. Section 907.3, subsection 3, paragraph c,
27 subparagraph (1), Code Supplement 1997, is amended to read as
28 follows:

29 (1) If the defendant's alcohol concentration established
30 by the results of an analysis of a specimen of the defendant's
31 blood, breath, or urine withdrawn in accordance with chapter
32 321J exceeds .15, regardless of whether or not the alcohol
33 concentration indicated by the chemical test minus the
34 established margin of error inherent in the device or method
35 used to conduct the test equals an alcohol concentration of

1 .15 or more.

2 Sec. 8. EFFECTIVE DATE. This Act, being deemed of
3 immediate importance, takes effect upon enactment.

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H-8752

1 Amend Senate File 2391, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 1, by inserting before line 31 the
4 following:

5 "Sec. 101. Section 321J.4, subsection 9, Code
6 Supplement 1997, is amended by adding the following
7 new unnumbered paragraph:
8 NEW UNNUMBERED PARAGRAPH. Notwithstanding any
9 provision of this chapter to the contrary, the court
10 may order the department to issue a temporary
11 restricted license to a person otherwise eligible for
12 a temporary restricted license under this subsection,
13 whose period of revocation under this chapter has
14 expired, but who has not met all requirements for
15 reinstatement of the person's motor vehicle license or
16 nonresident operating privileges.

17 Sec. 102. Section 321J.20, Code Supplement 1997,
18 is amended by adding the following new subsection:

19 NEW SUBSECTION. 7. Notwithstanding any provision
20 of this chapter to the contrary, the department may
21 issue a temporary restricted license to a person
22 otherwise eligible for a temporary restricted license
23 under this section, whose period of revocation under
24 this chapter has expired, but who has not met all
25 requirements for reinstatement of the person's motor
26 vehicle license or nonresident operating privileges."

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

29 "Sec. ____ . RETROACTIVE APPLICABILITY. Sections
30 101 and 102 of this Act are retroactively applicable
31 to July 1, 1997, and are applicable on and after that
32 date."

33 3. Title page, line 8, by inserting after the
34 word "date" the following: "and a retroactive
35 applicability date".

A 36 4. By renumbering as necessary.

By HEATON of Henry

H-8752 FILED MARCH 26, 1998
A. adopted 3/31/98 (P. 1104)
B. withdrawn 3/31/98 (P. 1104)

SENATE FILE 2391

H-8786

1 Amend Senate File 2391, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 1, line 16, by inserting after the word
4 "sentence" the following: "of incarceration".

5 2. Page 1, line 18, by inserting after the word
6 "sentence" the following: "not involving
7 incarceration".

8 3. Page 2, line 21, by inserting after the word
9 "sentence" the following: "of incarceration".

10 4. Page 2, line 23, by inserting after the word
11 "sentence" the following: "not involving
12 incarceration".

By LAMBERTI of Polk

H-8786 FILED MARCH 30, 1998

Adopted 3/31/98 (P. 1103)

H-8502

- 1 Amend Senate File 2391 as follows:
2 1. Page 1, by inserting before line 31 the
3 following:
4 "Sec. 101. Section 321J.4, Code Supplement 1997,
5 is amended by adding the following new subsection:
6 NEW SUBSECTION. 10. Notwithstanding the
7 requirement in subsections 2, 4, and 8 for a court
8 order for an individual to install an ignition
9 interlock device as a prerequisite to obtaining a
10 temporary restricted license, such requirement shall
11 apply only to offenses committed on or after July 1,
12 1997."
13 2. Page 3, line 2, by striking the word "DATE."
14 and inserting the following: "AND APPLICABILITY
15 DATES. Section 101 of this Act is retroactively
16 applicable to July 1, 1997, and is applicable on and
17 after that date."
18 3. Title page, lines 7 and 8, by striking the
19 words "and providing an effective date" and inserting
20 the following: "providing a limitation on the
21 applicability of the requirement for an ignition
22 interlock device as a prerequisite to obtaining a
23 temporary restricted license, and providing effective
24 and retroactive applicability dates".
25 4. By renumbering as necessary.

By KREMER of Buchanan

H-8502 FILED MARCH 19, 1998

Adopted
3/31/98
(p 1103)

H-8796

Page 11

1 section 1, is amended to read as follows:

2 a. (1) Drug or alcohol testing or retesting by an
3 employer shall be carried out within the terms of a
4 written policy which has been provided to every
5 employee subject to testing, and is available for
6 review by employees and prospective employees. If an
7 employee or prospective employee is a minor, the
8 employer shall provide a copy of the written policy to
9 a parent of the employee or prospective employee and
10 shall obtain a receipt or acknowledgement from the
11 parent that a copy of the policy has been received.

12 Providing a copy of the written policy to a parent of
13 a minor by certified mail, return receipt requested,
14 shall satisfy the requirements of this subparagraph.

15 (2) In addition, the written policy shall provide
16 that any notice required by subsection 7, paragraph
17 "i", to be provided to an individual pursuant to a
18 drug or alcohol test conducted pursuant to this
19 section, shall also be provided to the parent of the
20 individual if the individual tested is a minor and a
21 parent of the minor has not specifically waived the
22 requirement to be provided notice. If a parent of the
23 minor has waived the requirement to provide notice,
24 the employer shall not be required to provide notice
25 to any person other than the individual tested.

26 (3) In providing information or notice to a parent
27 as required by this paragraph, an employer shall rely
28 on the information regarding the identity of a parent
29 as provided by the minor.

30 (4) For purposes of this paragraph, "minor" means
31 an individual who is under eighteen years of age and
32 is not considered by law to be an adult, and "parent"
33 means one biological or adoptive parent, a stepparent,
34 or a legal guardian or custodian of the minor."

35 7. Page 3, by inserting before line 2 the
36 following:

37 "DIVISION VII

38 Sec. ____ . IMPLEMENTATION OF ACT. Section 25B.2,
39 subsection 3, shall not apply to this Act.

40 Sec. ____ . EFFECTIVE DATES. Division VI of this
41 Act takes effect upon enactment or April 16, 1998,
42 whichever is later."

43 8. Page 3, line 2, by striking the word "This"
44 and inserting the following: "Division I of this".

45 9. Title page, line 1, by inserting after the
46 word "Act" the following: "relating to certain drug
47 and alcohol abuse and certain offenses which carry a
48 mandatory minimum sentence, by".

49 10. Title page, line 5, by inserting after the
50 word "device," the following: "requiring the

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Page 12

1 imposition of a mandatory minimum penalty for certain
 2 methamphetamine offenses, prohibiting the granting of
 3 a deferred judgment or sentence or a suspended
 4 sentence for certain methamphetamine offenses,
 5 providing that persons convicted of certain
 6 methamphetamine offenses are ineligible for bail upon
 7 appeal,".

8 11. Title page, line 7, by inserting after the
 9 word "violations," the following: "increasing and
 10 adding certain penalties for certain drug offenses,
 11 providing for the denial of federal benefits to
 12 persons convicted of drug-related offenses, providing
 13 for an operating while intoxicated offense for persons
 14 driving after taking certain controlled substances,
 15 providing privacy and notice in certain drug and
 16 alcohol testing situations, making related changes,
 17 making penalties applicable,".

18 12. By renumbering as necessary.

By LAMBERTI of Polk
 SUKUP of Franklin
 LARSON of Linn
 JENKINS of Black Hawk
 THOMSON of Linn
 MILLAGE of Scott
 VEENSTRA of Sioux
 WEIDMAN of Cass
 ARNOLD of Lucas
 MARTIN of Scott
 HANSEN of Pottawattamie
 VAN FOSSEN of Scott
 RANTS of Woodbury
 DIX of Butler

GIPP of Winneshiek
 HOUSER of Pottawattamie
 TEIG of Hamilton
 METCALF of Polk
 EDDIE of Buena Vista
 CARROLL of Poweshiek
 BLODGETT of Cerro Gordo
 GREIG of Emmet
 HAHN of Muscatine
 GREINER of Washington
 RAYHONS of Hancock
 DOLECHECK of Ringgold
 BOGGESS of Taylor
 NELSON of Marshall

H-8796 FILED MARCH 31, 1998

Not Reported 3/31/98
Motion to Suspend Rules Prevailed 3/31/98
Adopted as Amended 3/31/98 (p.1105)

SENATE FILE 2391

H-8796

1 Amend Senate File 2391, as amended, passed, and
2 reprinted by the Senate, as follows:

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

5 "DIVISION I".

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

8 "DIVISION II

9 Sec. _____. Section 321J.1, Code 1997, is amended by
10 adding the following new subsection:

11 NEW SUBSECTION. 3A. "Controlled substance" means
12 any drug, substance, or compound that is listed in
13 section 124.204 or 124.206, or any metabolite or
14 derivative of the drug, substance, or compound.

15 Sec. _____. Section 321J.2, subsection 1, Code
16 Supplement 1997, is amended to read as follows:

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

20 a. While under the influence of an alcoholic
21 beverage or other drug or a combination of such
22 substances.

23 b. While having an alcohol concentration as
24 ~~defined in section 321J.2~~ of .10 or more.

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

28 Sec. _____. Section 321J.2, subsections 7 and 8,
29 Code Supplement 1997, are amended to read as follows:

30 7. a. This section does not apply to a person
31 operating a motor vehicle while under the influence of
32 a drug if the substance was prescribed for the person
33 and was taken under the prescription and in accordance
34 with the directions of a medical practitioner as
35 defined in chapter 155A, if there is no evidence of
36 the consumption of alcohol and the medical
37 practitioner had not directed the person to refrain
38 from operating a motor vehicle.

39 b. When charged with a violation of subsection 1,
40 paragraph "c", a person may assert, as an affirmative
41 defense, that the controlled substance present in the
42 person's blood or urine was prescribed for the person
43 and was taken in accordance with the directions of a
44 practitioner and the labeling directions of the
45 pharmacy, as that person and place of business are
46 defined in section 155A.3.

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

H-8796

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

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

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

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

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

29 A person who operates a motor vehicle in this state
30 under circumstances which give reasonable grounds to
31 believe that the person has been operating a motor
32 vehicle in violation of section 321J.2 or 321J.2A is
33 deemed to have given consent to the withdrawal of
34 specimens of the person's blood, breath, or urine and
35 to a chemical test or tests of the specimens for the
36 purpose of determining the alcohol concentration or
37 presence of a controlled substance or other drugs,
38 subject to this section. The withdrawal of the body
39 substances and the test or tests shall be administered
40 at the written request of a peace officer having
41 reasonable grounds to believe that the person was
42 operating a motor vehicle in violation of section
43 321J.2 or 321J.2A, and if any of the following
44 conditions exist:

45 Sec. _____. Section 321J.6, subsection 1, paragraphs
46 d and f, Code 1997, are amended to read as follows:

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

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

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

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

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

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

33 Sec. _____. Section 321J.10, subsection 4, Code
34 1997, is amended to read as follows:

35 4. a. Search warrants issued under this section
36 shall authorize and direct peace officers to secure
37 the withdrawal of blood specimens by medical personnel
38 under section 321J.11. Reasonable care shall be
39 exercised to ensure the health and safety of the
40 persons from whom specimens are withdrawn in execution
41 of the warrants.

42 b. If a person from whom a specimen is to be
43 withdrawn objects to the withdrawal of blood, and the
44 warrant may be executed as follows:

45 (1) If the person is capable of giving a specimen
46 of breath, and a direct breath testing instrument is
47 readily available, the warrant may be executed by the
48 withdrawal of a specimen of breath for chemical
49 testing, unless the peace officer has reasonable
50 grounds to believe that the person was under the

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1 influence of a controlled substance, a drug other than
2 alcohol, or a combination of alcohol and another drug.
3 (2) If the testimony in support of the warrant
4 sets forth facts and information that the peace
5 officer has reasonable grounds to believe that the
6 person was under the influence of a controlled
7 substance, a drug other than alcohol, or a combination
8 of alcohol and another drug, a urine sample shall be
9 collected in lieu of a blood sample, if the person is
10 capable of giving a urine sample and the sample can be
11 collected without the need to physically compel the
12 execution of the warrant.

13 Sec. _____. Section 321J.11, unnumbered paragraph 1,
14 Code 1997, is amended to read as follows:

15 Only a licensed physician, licensed physician
16 assistant as defined in section 148C.1, medical
17 technologist, or registered nurse, acting at the
18 request of a peace officer, may withdraw a specimen of
19 blood for the purpose of determining the alcohol
20 concentration or the presence of a controlled
21 substance or other drugs. However, any peace officer,
22 using devices and methods approved by the commissioner
23 of public safety, may take a specimen of a person's
24 breath or urine for the purpose of determining the
25 alcohol concentration or the presence of a controlled
26 substance or other drugs. Only new equipment kept
27 under strictly sanitary and sterile conditions shall
28 be used for drawing blood.

29 Sec. _____. Section 321J.12, subsection 1, 3, 4, and
30 6, Code Supplement 1997, are amended to read as
31 follows:

32 1. Upon certification, subject to penalty for
33 perjury, by the peace officer that there existed
34 reasonable grounds to believe that the person had been
35 operating a motor vehicle in violation of section
36 321J.2, that there existed one or more of the
37 necessary conditions for chemical testing described in
38 section 321J.6, subsection 1, and that the person
39 submitted to chemical testing and the test results
40 indicated the presence of a controlled substance or
41 other drug, or an alcohol concentration as-defined-in
42 equal to or in excess of the level prohibited by
43 section ~~321J.1-of-10-or-more~~ 321J.2, or a combination
44 of alcohol and another drug in violation of section
45 321J.2, the department shall revoke the person's motor
46 vehicle license or nonresident operating privilege for
47 the following periods of time:

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

50 b. One year if the person has had a previous

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1 revocation under this chapter.

2 3. The effective date of the revocation shall be
3 ten days after the department has mailed notice of
4 revocation to the person by certified mail. The peace
5 officer who requested or directed the administration
6 of the chemical test may, on behalf of the department,
7 serve immediate notice of revocation on a person whose
8 test results indicated the presence of a controlled
9 substance or other drug, or an alcohol concentration
10 of--10-or-more equal to or in excess of the level
11 prohibited by section 321J.2, or a combination of
12 alcohol and another controlled substance or drug in
13 violation of section 321J.2.

14 4. If the peace officer serves that immediate
15 notice, the peace officer shall take the person's Iowa
16 license or permit, if any, and issue a temporary
17 license valid only for ten days. The peace officer
18 shall immediately send the person's driver's license
19 to the department along with the officer's certificate
20 indicating that the test results indicated the
21 presence of a controlled substance or other drug, or
22 an alcohol concentration of--10-or-more equal to or in
23 excess of the level prohibited by section 321J.2.

24 6. The results of a chemical test may not be used
25 as the basis for a revocation of a person's motor
26 vehicle license or nonresident operating privilege if
27 the alcohol or drug concentration indicated by the
28 chemical test minus the established margin of error
29 inherent in the device or method used to conduct the
30 chemical test does is not equal an-alcohol
31 concentration-of--10-or-more-for-violations-under to
32 or in excess of the level prohibited by section 321J.2
33 or of--02-or-more-for-violations-of-section 321J.2A.

34 Sec. ____ . Section 321J.13, subsection 2, Code
35 Supplement 1997, is amended to read as follows:

36 2. The department shall grant the person an
37 opportunity to be heard within forty-five days of
38 receipt of a request for a hearing if the request is
39 made not later than ten days after receipt of notice
40 of revocation served pursuant to section 321J.9 or
41 321J.12. The hearing shall be before the department
42 in the county where the alleged events occurred,
43 unless the director and the person agree that the
44 hearing may be held in some other county, or the
45 hearing may be held by telephone conference at the
46 discretion of the agency conducting the hearing. The
47 hearing may be recorded and its scope shall be limited
48 to the issues of whether a peace officer had
49 reasonable grounds to believe that the person was
50 operating a motor vehicle in violation of section

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1 321J.2 or section 321J.2A and either one or more of
2 the following:

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

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

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

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

19 321J.15 EVIDENCE IN ANY ACTION.

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

34 Sec. _____. Section 321J.18, Code 1997, is amended
35 to read as follows:

36 321J.18 OTHER EVIDENCE.

37 This chapter does not limit the introduction of any
38 competent evidence bearing on the question of whether
39 a person was under the influence of an alcoholic
40 beverage or a controlled substance or other drug,
41 including the results of chemical tests of specimens
42 of blood, breath, or urine obtained more than two
43 hours after the person was operating a motor vehicle."

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

46 "DIVISION III

47 Sec. _____. Section 124.401, subsection 1, paragraph
48 d, Code Supplement 1997, is amended to read as
49 follows:

50 d. Violation of this subsection, with respect to

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1 any other controlled substances, counterfeit
2 substances, or simulated controlled substances
3 classified in schedule IV or V is an aggravated
4 misdemeanor. However, violation of this subsection
5 involving fifty kilograms or less of marijuana, is a
6 class "D" felony, and in addition to the provisions of
7 section 902.9, subsection 4, shall be punished by a
8 fine of not less than one thousand dollars nor more
9 than five seven thousand five hundred dollars.

10 Sec. ____ . Section 124.401, subsection 5, Code
11 Supplement 1997, is amended to read as follows:

12 5. It is unlawful for any person knowingly or
13 intentionally to possess a controlled substance unless
14 such substance was obtained directly from, or pursuant
15 to, a valid prescription or order of a practitioner
16 while acting in the course of the practitioner's
17 professional practice, or except as otherwise
18 authorized by this chapter. Any person who violates
19 this subsection is guilty of a serious misdemeanor for
20 a first offense. A person who commits a violation of
21 this subsection and who has previously been convicted
22 of violating this subsection is guilty of an
23 aggravated misdemeanor. A person who commits a
24 violation of this subsection and has previously been
25 convicted two or more times of violating this
26 subsection is guilty of a class "D" felony.

27 PARAGRAPH DIVIDED. If the controlled substance is
28 marijuana, the punishment shall be by imprisonment in
29 the county jail for not more than six months or by a
30 fine of not more than one thousand dollars, or by both
31 such fine and imprisonment for a first offense. If
32 the controlled substance is marijuana and the person
33 has been previously convicted of a violation of this
34 subsection in which the controlled substance was
35 marijuana, the punishment shall be as provided in
36 section 903.1, subsection 1, paragraph "b". If the
37 controlled substance is marijuana and the person has
38 been previously convicted two or more times of a
39 violation of this subsection in which the controlled
40 substance was marijuana, the person is guilty of an
41 aggravated misdemeanor.

42 PARAGRAPH DIVIDED. All or any part of a sentence
43 imposed pursuant to this section subsection may be
44 suspended and the person placed upon probation upon
45 such terms and conditions as the court may impose
46 including the active participation by such person in a
47 drug treatment, rehabilitation or education program
48 approved by the court."

49 4. Page 3, by inserting before line 2 the
50 following:

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"DIVISION IV

1
2 Sec. ____ . Section 901.5, Code 1997, is amended by
3 adding the following new subsections:

4 NEW SUBSECTION. 11. In addition to any sentence
5 or other penalty imposed against the defendant for an
6 offense under chapter 124, the court shall consider
7 the provisions of 21 U.S.C. § 862, regarding the
8 denial of federal benefits to drug traffickers and
9 possessors convicted under state or federal law, and
10 may enter an order specifying the range and scope of
11 benefits to be denied to the defendant, according to
12 the provisions of 21 U.S.C. § 862. For the purposes
13 of this subsection, "federal benefit" means the
14 issuance of any grant, contract, loan, professional
15 license, or commercial license provided by an agency
16 of the United States or through the appropriation of
17 funds of the United States, but does not include any
18 retirement, welfare, social security, health,
19 disability, veterans, public housing, or similar
20 benefit for which payments or services are required
21 for eligibility. The supreme court may adopt rules
22 establishing sentencing guidelines consistent with
23 this subsection and 21 U.S.C. § 862. The clerk of the
24 district court shall send a copy of any order issued
25 pursuant to this subsection to the denial of federal
26 benefits program of the United States department of
27 justice, along with any other forms and information
28 required by the department.

29 NEW SUBSECTION. 12. In addition to any sentence
30 or other penalty imposed against the defendant for an
31 offense under chapter 124, the court shall consider
32 the denial of state benefits to the defendant, and may
33 enter an order specifying the range and scope of
34 benefits to be denied to the defendant, comparable to
35 the federal benefits denied under subsection 11. For
36 the purposes of this subsection, "state benefit" means
37 the issuance of any grant, contract, loan,
38 professional license, or commercial license provided
39 by a state agency, department, program, or otherwise
40 through the appropriation of funds of the state, but
41 does not include any retirement, welfare, health,
42 disability, veterans, public housing, or similar
43 benefit. The supreme court may adopt rules
44 establishing sentencing guidelines consistent with
45 this subsection and comparable to the guidelines for
46 denial of federal benefits in 21 U.S.C. § 862. The
47 clerk of the district court shall send a copy of any
48 order issued pursuant to this subsection to each state
49 agency, department, or program required to deny
50 benefits pursuant to such an order."

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

3 "DIVISION V

4 Sec. ____ . Section 811.1, subsection 2, Code
5 Supplement 1997, is amended to read as follows:

6 2. A defendant appealing a conviction of a class
7 "A" felony, murder, any class "B" felony included in
8 section 707.6A, felonious assault, felonious child
9 endangerment, sexual abuse in the second degree,
10 sexual abuse in the third degree, kidnapping, robbery
11 in the first degree, arson in the first degree, or
12 burglary in the first degree, or any felony included
13 in section 124.401, subsection 1, paragraph "a", or a
14 violation of section 124.401, subsection 1, paragraph
15 "b".

16 Sec. ____ . Section 901.10, Code 1997, is amended to
17 read as follows:

18 901.10 IMPOSITION OF MANDATORY MINIMUM SENTENCES.

19 1. A court sentencing a person for the person's
20 first conviction under section 124.406, 124.413, or
21 902.7 may, at its discretion, sentence the person to a
22 term less than provided by the statute if mitigating
23 circumstances exist and those circumstances are stated
24 specifically in the record. ~~However, the~~

25 2. Notwithstanding subsection 1, if the sentence
26 under section 124.413 involves a methamphetamine
27 offense under section 124.401, subsection 1, paragraph
28 "a" or "b", the court shall not grant any reduction of
29 sentence unless the defendant pleads guilty. If the
30 defendant pleads guilty, the court may, at its
31 discretion, reduce the mandatory minimum sentence by
32 up to one-third. If the defendant additionally
33 cooperates in the prosecution of other persons
34 involved in the sale or use of controlled substances,
35 and if the prosecutor requests an additional reduction
36 in defendant's sentence because of such cooperation,
37 the court may grant a further reduction in defendant's
38 mandatory minimum sentence, up to one-half of the
39 remaining mandatory minimum sentence.

40 3. The state may appeal the discretionary decision
41 on the grounds that the stated mitigating
42 circumstances do not warrant a reduction of the
43 sentence.

44 Sec. ____ . Section 907.3, subsection 1, Code
45 Supplement 1997, is amended by adding the following
46 new paragraph:

47 NEW PARAGRAPH. k. The offense is a violation of
48 section 124.401, subsection 1, paragraph "a" or "b",
49 and the controlled substance is methamphetamine.

50 Sec. ____ . Section 907.3, subsection 2, Code

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1 Supplement 1997, is amended by adding the following
2 new paragraph:

3 NEW PARAGRAPH. e. The offense is a violation of
4 section 124.401, subsection 1, paragraph "a" or "b",
5 and the controlled substance is methamphetamine.

6 Sec. _____. Section 907.3, subsection 3, Code
7 Supplement 1997, is amended by adding the following
8 new paragraph:

9 NEW PARAGRAPH. e. The offense is a violation of
10 section 124.401, subsection 1, paragraph "a" or "b",
11 and the controlled substance is methamphetamine."

12 6. Page 3, by inserting before line 2 the
13 following:

14 "DIVISION VI

15 Sec. _____. Section 730.5, subsection 7, paragraph
16 a, as enacted in 1998 Iowa Acts, House File 299,
17 section 1, is amended to read as follows:

18 a. The collection of samples shall be performed
19 under sanitary conditions and with regard for the
20 privacy of the individual from whom the specimen is
21 being obtained and in a manner reasonably calculated
22 to preclude contamination or substitution of the
23 specimen. If the sample collected is urine,
24 procedures shall be established to provide for
25 individual privacy in the collection of the sample
26 unless there is reason to believe that a particular
27 individual subject to testing may alter or substitute
28 the urine specimen to be provided, or has previously
29 altered or substituted a urine specimen provided
30 pursuant to a drug or alcohol test. For purposes of
31 this paragraph, "individual privacy" means a location
32 at the collection site where urination can occur in
33 private, which has been secured by visual inspection
34 to ensure that other persons are not present, which
35 provides that undetected access to the location is not
36 possible during urination, and which provides for the
37 ability to effectively restrict access to the location
38 during the time the specimen is provided. If an
39 individual providing a sample is under eighteen years
40 of age and is not considered by law to be an adult and
41 if collection of the sample is directly monitored or
42 observed by another individual, or if an individual is
43 providing a urine sample and collection of the sample
44 is directly monitored or observed by another
45 individual, the individual who is directly monitoring
46 or observing the collection shall be of the same
47 gender as the individual from whom the sample is being
48 collected.

49 Sec. _____. Section 730.5, subsection 9, paragraph
50 a, as enacted in 1998 Iowa Acts, House File 299,

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1 convicted of a violation of this subsection in which
 2 the controlled substance was marijuana, the punishment
 3 shall be as provided in section 903.1, subsection 1,
 4 paragraph "b", and the person shall perform not less
 5 than sixty hours of unpaid community service. If the
 6 controlled substance is marijuana and the person has
 7 been previously convicted two or more times of a
 8 violation of this subsection in which the controlled
 9 substance was marijuana, the person is guilty of an
 10 aggravated misdemeanor and shall perform not less than
 11 eighty hours of unpaid community service.

12 PARAGRAPH DIVIDED. A++ Except for any mandatory
 13 community service performance requirements, all or any
 14 part of a sentence imposed pursuant to this section
 15 subsection may be suspended and the person placed upon
 16 probation upon such terms and conditions as the court
 17 may impose including the active participation by such
 18 person in a drug treatment, rehabilitation or
 19 education program approved by the court."

20 3. Page 12, line 2, by inserting after the word
 21 "offenses" the following: "and requiring community
 22 service for certain other controlled substance
 23 violations".

By KREIMAN of Davis

H-8820 FILED MARCH 31, 1998

WITHDRAWN

3/31/98

(1101)

SENATE FILE 2391

H-8821

1 Amend the amendment, H-8796, Senate File 2391, as
2 amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 7, line 4, by inserting after the word
5 "misdemeanor" the following: "and the violator shall
6 be imprisoned in the county jail for not less than
7 seven days".

8 2. Page 7, line 9, by inserting after the word
9 "dollars" the following: "and imprisonment of not
10 less than thirty days".

11 3. Page 7, line 20, by inserting after the word
12 "offense" the following: ", and shall be imprisoned
13 in the county jail for not less than forty-eight
14 hours".

15 4. Page 7, line 23, by inserting after the word
16 "misdemeanor" the following: ", and shall be
17 imprisoned in the county jail for not less than seven
18 days".

19 5. Page 7, line 26, by inserting after the word
20 "felony" the following: ", and shall be imprisoned
21 for not less than thirty days".

22 6. Page 7, line 29, by inserting after the word
23 "for" the following: "not less than forty-eight hours
24 and".

25 7. Page 7, line 36, by inserting after the word
26 "b" the following: ", except that the person shall
27 also be imprisoned in the county jail for not less
28 than forty-eight hours".

29 8. Page 7, line 41, by inserting after the word
30 "misdemeanor" the following: ", and shall be
31 imprisoned in the county jail for not less than seven
32 days".

33 9. Page 7, line 42, by striking the word "All"
34 and inserting the following: "All Except for any
35 mandatory minimum term of imprisonment, all".

36 10. Page 12, line 2, by striking the word
37 "methamphetamine".

By KREIMAN of Davis

H-8821 FILED MARCH 31, 1998

WITHDRAWN

WITHDRAWN

3/31/98 (p.1101)

SENATE FILE 2391

H-8820

1 Amend the amendment, H-8796, to Senate File 2391,
2 as amended, passed, and reprinted by the Senate, as
3 follows:

4 1. By striking page 6, line 50, through page 7,
5 line 9, and inserting the following:

6 "d. Violation of this subsection, with respect to
7 any other controlled substances, counterfeit
8 substances, or simulated controlled substances
9 classified in schedule IV or V is an aggravated
10 misdemeanor and persons convicted of violating this
11 subsection shall also perform not less than eighty
12 hours of unpaid community service. However, violation
13 of this subsection involving fifty kilograms or less
14 of marijuana, is a class "D" felony, and in addition
15 to the provisions of section 902.9, subsection 4,
16 shall be punished by a fine of not less than one
17 thousand dollars nor more than five seven thousand
18 five hundred dollars and shall perform not less than
19 three hundred twenty hours of unpaid community
20 service."

21 2. Page 7, by striking lines 12 through 48 and
22 inserting the following:

23 "5. It is unlawful for any person knowingly or
24 intentionally to possess a controlled substance unless
25 such substance was obtained directly from, or pursuant
26 to, a valid prescription or order of a practitioner
27 while acting in the course of the practitioner's
28 professional practice, or except as otherwise
29 authorized by this chapter. Any person who violates
30 this subsection is guilty of a serious misdemeanor for
31 a first offense and shall also perform not less than
32 forty hours of unpaid community service. A person who
33 commits a violation of this subsection and who has
34 previously been convicted of violating this subsection
35 is guilty of an aggravated misdemeanor and shall also
36 perform not less than eighty hours of unpaid community
37 service. A person who commits a violation of this
38 subsection and has previously been convicted two or
39 more times of violating this subsection is guilty of a
40 class "D" felony and shall also perform not less than
41 three hundred twenty hours of unpaid community
42 service.

43 PARAGRAPH DIVIDED. If the controlled substance is
44 marijuana, the punishment shall be by imprisonment in
45 the county jail for not more than six months or by a
46 fine of not more than one thousand dollars, or by both
47 such fine and imprisonment for a first offense and the
48 person shall also perform not less than forty hours of
49 unpaid community service. If the controlled substance
50 is marijuana and the person has been previously

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SENATE FILE 2391

H-8829

1 Amend the amendment, H-8796, to Senate File 2391,
2 as amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 4, by striking line 25 and inserting the
5 following: "alcohol concentration, or may take a
6 specimen of a person's urine for the purpose of
7 determining the presence of a controlled".

8 2. Page 6, line 30, by inserting after the word
9 "device" the following: "intended to determine
10 alcohol concentration".

By HOLVECK of Polk

H-8829 FILED MARCH 31, 1998

Adopted 3/31/98 (P. 1102)

SENATE FILE 2391

H-8833

1 Amend the amendment, H-8796, to Senate File 2391,
2 as amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 2, by inserting before line 27 the
5 following:

6 "Sec. ____ . Section 321J.5, Code 1997, is amended
7 by adding the following new subsection:

8 NEW SUBSECTION. 1A. When a peace officer has
9 reasonable grounds to believe that a motor vehicle
10 operator may be violating or has violated section
11 321J.2, subsection 1, paragraph "c", the peace officer
12 may request that the operator provide a sample of the
13 operator's urine for a preliminary screening test.
14 The department of public safety shall adopt nationally
15 accepted standards for determining detectable levels
16 of controlled substances in an initial screening test
17 for controlled substances."

18 2. Page 3, by inserting before line 8 the
19 following:

20 "Sec. ____ . Section 321J.6, subsection 1, Code
21 1997, is amended by adding the following new
22 paragraph:

23 NEW PARAGRAPH. h. The preliminary urine screening
24 test indicates a detectable amount of a controlled
25 substance."

By BERNAU of Story
SUKUP of Franklin

H-8833 FILED MARCH 31, 1998

Adopted
*3/31/98**(P. 1105)*

SENATE FILE 2391

H-8822

1 Amend the amendment, H-8796, to Senate File 2391,
 2 as amended, passed, and reprinted by the Senate, as
 3 follows:
 4 1. Page 9, by inserting before line 4 the
 5 following:
 6 "Sec. ____ . Section 811.2, subsection 1, Code 1997,
 7 is amended by adding the following new unnumbered
 8 paragraph:
 9 NEW UNNUMBERED PARAGRAPH. Any bailable defendant
 10 who is charged with unlawful possession, manufacture,
 11 delivery, or distribution of a controlled substance or
 12 other drug under chapter 124 or 125 and is ordered
 13 released shall be required, as a condition of that
 14 release, to submit to a substance abuse evaluation and
 15 follow any recommendations proposed in the evaluation
 16 for appropriate substance abuse treatment."
 17 2. Page 12, line 7, by inserting after the word
 18 "appeal" the following: "and certain bailable
 19 defendants are subject to certain bail conditions".
 20 3. By numbering and renumbering as necessary.
 By KREIMAN of Davis

H-8822 FILED MARCH 31, 1998

WITHDRAWN

3/31/98
p 1101

SENATE FILE 2391

H-8827

1 Amend the amendment, H-8796, to Senate File 2391,
 2 as amended, passed, and reprinted by the Senate, as
 3 follows:
 4 1. Page 11, line 20, by striking the words
 5 "individual if" and inserting the following:
 6 "individual by certified mail, return receipt
 7 requested, if".

By HUSER of Polk
SUKUP of Franklin

H-8827 FILED MARCH 31, 1998

Adopted 3/31/98 (p.1101)

SENATE FILE 2391

H-8828

1 Amend the amendment, H-8796, to Senate File 2391,
 2 as amended, passed, and reprinted by the Senate, as
 3 follows:
 4 1. Page 1, line 35, by inserting after the figure
 5 "155A" the following: "or if the substance was
 6 dispensed by a pharmacist without a prescription
 7 pursuant to the rules of the board of pharmacy
 8 examiners".
 9 2. Page 1, line 37, by inserting after the word
 10 "practitioner" the following: "or pharmacist".
 11 3. Page 1, line 42, by inserting after the word
 12 "prescribed" the following: "or dispensed".

By OSTERHAUS of Jackson

H-8828 FILED MARCH 31, 1998

*Adopted
3/31/98
(p. 1102)*

HOUSE AMENDMENT TO
SENATE FILE 2391

S-5468

1 Amend Senate File 2391, as amended, passed, and
2 reprinted by the Senate, as follows:

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

5 "DIVISION I".

6 2. Page 1, line 16, by inserting after the word
7 "sentence" the following: "of incarceration".

8 3. Page 1, line 18, by inserting after the word
9 "sentence" the following: "not involving
10 incarceration".

11 4. Page 1, by inserting before line 31 the
12 following:

13 "Sec. 101. Section 321J.4, subsection 9, Code
14 Supplement 1997, is amended by adding the following
15 new unnumbered paragraph:

16 NEW UNNUMBERED PARAGRAPH. Notwithstanding any
17 provision of this chapter to the contrary, the court
18 may order the department to issue a temporary
19 restricted license to a person otherwise eligible for
20 a temporary restricted license under this subsection,
21 whose period of revocation under this chapter has
22 expired, but who has not met all requirements for
23 reinstatement of the person's motor vehicle license or
24 nonresident operating privileges.

25 Sec. 102. Section 321J.20, Code Supplement 1997,
26 is amended by adding the following new subsection:

27 NEW SUBSECTION. 7. Notwithstanding any provision
28 of this chapter to the contrary, the department may
29 issue a temporary restricted license to a person
30 otherwise eligible for a temporary restricted license
31 under this section, whose period of revocation under
32 this chapter has expired, but who has not met all
33 requirements for reinstatement of the person's motor
34 vehicle license or nonresident operating privileges."

35 5. Page 1, by inserting before line 31 the
36 following:

37 "Sec. 103. Section 321J.4, Code Supplement 1997,
38 is amended by adding the following new subsection:

39 NEW SUBSECTION. 10. Notwithstanding the
40 requirement in subsections 2, 4, and 8 for a court
41 order for an individual to install an ignition
42 interlock device as a prerequisite to obtaining a
43 temporary restricted license, such requirement shall
44 apply only to offenses committed on or after July 1,
45 1997."

46 6. Page 2, line 21, by inserting after the word
47 "sentence" the following: "of incarceration".

48 7. Page 2, line 23, by inserting after the word
49 "sentence" the following: "not involving
50 incarceration".

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

3 "DIVISION II

4 Sec. _____. Section 321J.1, Code 1997, is amended by
5 adding the following new subsection:

6 NEW SUBSECTION. 3A. "Controlled substance" means
7 any drug, substance, or compound that is listed in
8 section 124.204 or 124.206, or any metabolite or
9 derivative of the drug, substance, or compound.

10 Sec. _____. Section 321J.2, subsection 1, Code
11 Supplement 1997, is amended to read as follows:

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

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

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

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

23 Sec. _____. Section 321J.2, subsections 7 and 8,
24 Code Supplement 1997, are amended to read as follows:

25 7. a. This section does not apply to a person
26 operating a motor vehicle while under the influence of
27 a drug if the substance was prescribed for the person
28 and was taken under the prescription and in accordance
29 with the directions of a medical practitioner as
30 defined in chapter 155A or if the substance was
31 dispensed by a pharmacist without a prescription
32 pursuant to the rules of the board of pharmacy
33 examiners, if there is no evidence of the consumption
34 of alcohol and the medical practitioner or pharmacist
35 had not directed the person to refrain from operating
36 a motor vehicle.

37 b. When charged with a violation of subsection 1,
38 paragraph "c", a person may assert, as an affirmative
39 defense, that the controlled substance present in the
40 person's blood or urine was prescribed or dispensed
41 for the person and was taken in accordance with the
42 directions of a practitioner and the labeling
43 directions of the pharmacy, as that person and place
44 of business are defined in section 155A.3.

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

49 a. The alcohol concentration established by the
50 results of an analysis of a specimen of the

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1 defendant's blood, breath, or urine withdrawn within
2 two hours after the defendant was driving or in
3 physical control of a motor vehicle is presumed to be
4 the alcohol concentration at the time of driving or
5 being in physical control of the motor vehicle.

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

14 Sec. ____ . Section 321J.2, subsection 10, Code
15 Supplement 1997, is amended to read as follows:

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

25 Sec. ____ . Section 321J.5, Code 1997, is amended by
26 adding the following new subsection:

27 NEW SUBSECTION. 1A. When a peace officer has
28 reasonable grounds to believe that a motor vehicle
29 operator may be violating or has violated section
30 321J.2, subsection 1, paragraph "c", the peace officer
31 may request that the operator provide a sample of the
32 operator's urine for a preliminary screening test.
33 The department of public safety shall adopt nationally
34 accepted standards for determining detectable levels
35 of controlled substances in an initial screening test
36 for controlled substances.

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

39 A person who operates a motor vehicle in this state
40 under circumstances which give reasonable grounds to
41 believe that the person has been operating a motor
42 vehicle in violation of section 321J.2 or 321J.2A is
43 deemed to have given consent to the withdrawal of
44 specimens of the person's blood, breath, or urine and
45 to a chemical test or tests of the specimens for the
46 purpose of determining the alcohol concentration or
47 presence of a controlled substance or other drugs,
48 subject to this section. The withdrawal of the body
49 substances and the test or tests shall be administered
50 at the written request of a peace officer having

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1 reasonable grounds to believe that the person was
2 operating a motor vehicle in violation of section
3 321J.2 or 321J.2A, and if any of the following
4 conditions exist:

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

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

11 f. The preliminary breath screening test was
12 administered and it indicated an alcohol concentration
13 ~~of less than 0.10~~ the level prohibited by section
14 321J.2, and the peace officer has reasonable grounds
15 to believe that the person was under the influence of
16 a controlled substance, a drug other than alcohol, or
17 a combination of alcohol and another drug.

18 Sec. _____. Section 321J.6, subsection 1, Code 1997,
19 is amended by adding the following new paragraph:

20 NEW PARAGRAPH. h. The preliminary urine screening
21 test indicates a detectable amount of a controlled
22 substance.

23 Sec. _____. Section 321J.6, subsection 3, Code 1997,
24 is amended to read as follows:

25 3. Notwithstanding subsection 2, if the peace
26 officer has reasonable grounds to believe that the
27 person was under the influence of a controlled
28 substance, a drug other than alcohol, or a combination
29 of alcohol and another drug, a blood or urine test may
30 shall be required even after a-blood-or-breath another
31 type of test has been administered. Section 321J.9
32 applies to a refusal to submit to a chemical test of
33 urine or blood requested under this subsection.

34 Sec. _____. Section 321J.8, subsection 2, Code 1997,
35 is amended to read as follows:

36 2. If the person submits to the test and the
37 results indicate the presence of a controlled
38 substance or other drug, or an alcohol concentration
39 as-defined-in equal to or in excess of the level
40 prohibited by section 321J.1-of-10-or-more, or the
41 person-is-under-the-age-of-twenty-one-and-the-results
42 indicate-an-alcohol-concentration-of-0.02-or-more, but
43 less-than-10 321J.2 or 321J.2A, the person's motor
44 vehicle license or nonresident operating privilege
45 will be revoked by the department as required by and
46 for the applicable period specified under section
47 321J.12.

48 Sec. _____. Section 321J.10, subsection 4, Code
49 1997, is amended to read as follows:

50 4. a. Search warrants issued under this section

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

7 b. If a person from whom a specimen is to be
8 withdrawn objects to the withdrawal of blood, and the
9 warrant may be executed as follows:

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

18 (2) If the testimony in support of the warrant
19 sets forth facts and information that the peace
20 officer has reasonable grounds to believe that the
21 person was under the influence of a controlled
22 substance, a drug other than alcohol, or a combination
23 of alcohol and another drug, a urine sample shall be
24 collected in lieu of a blood sample, if the person is
25 capable of giving a urine sample and the sample can be
26 collected without the need to physically compel the
27 execution of the warrant.

28 Sec. ____. Section 321J.11, unnumbered paragraph 1,
29 Code 1997, is amended to read as follows:

30 Only a licensed physician, licensed physician
31 assistant as defined in section 148C.1, medical
32 technologist, or registered nurse, acting at the
33 request of a peace officer, may withdraw a specimen of
34 blood for the purpose of determining the alcohol
35 concentration or the presence of a controlled
36 substance or other drugs. However, any peace officer,
37 using devices and methods approved by the commissioner
38 of public safety, may take a specimen of a person's
39 breath or urine for the purpose of determining the
40 alcohol concentration, or may take a specimen of a
41 person's urine for the purpose of determining the
42 presence of a controlled substance or other drugs.
43 Only new equipment kept under strictly sanitary and
44 sterile conditions shall be used for drawing blood.

45 Sec. ____. Section 321J.12, subsection 1, 3, 4, and
46 6, Code Supplement 1997, are amended to read as
47 follows:

48 1. Upon certification, subject to penalty for
49 perjury, by the peace officer that there existed
50 reasonable grounds to believe that the person had been

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1 operating a motor vehicle in violation of section
2 321J.2, that there existed one or more of the
3 necessary conditions for chemical testing described in
4 section 321J.6, subsection 1, and that the person
5 submitted to chemical testing and the test results
6 indicated the presence of a controlled substance or
7 other drug, or an alcohol concentration as defined in
8 equal to or in excess of the level prohibited by
9 section ~~321J.1~~ or ~~more~~ 321J.2, or a combination
10 of alcohol and another drug in violation of section
11 321J.2, the department shall revoke the person's motor
12 vehicle license or nonresident operating privilege for
13 the following periods of time:

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

16 b. One year if the person has had a previous
17 revocation under this chapter.

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

30 4. If the peace officer serves that immediate
31 notice, the peace officer shall take the person's Iowa
32 license or permit, if any, and issue a temporary
33 license valid only for ten days. The peace officer
34 shall immediately send the person's driver's license
35 to the department along with the officer's certificate
36 indicating that the test results indicated the
37 presence of a controlled substance or other drug, or
38 an alcohol concentration of ~~10~~ or more equal to or in
39 excess of the level prohibited by section 321J.2.

40 6. The results of a chemical test may not be used
41 as the basis for a revocation of a person's motor
42 vehicle license or nonresident operating privilege if
43 the alcohol or drug concentration indicated by the
44 chemical test minus the established margin of error
45 inherent in the device or method used to conduct the
46 chemical test does is not equal an alcohol
47 concentration of ~~10~~ or more for violations under to
48 or in excess of the level prohibited by section 321J.2
49 or of ~~02~~ or more for violations of section 321J.2A.

50 Sec. ____ . Section 321J.13, subsection 2, Code

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1 Supplement 1997, is amended to read as follows:

2 2. The department shall grant the person an
3 opportunity to be heard within forty-five days of
4 receipt of a request for a hearing if the request is
5 made not later than ten days after receipt of notice
6 of revocation served pursuant to section 321J.9 or
7 321J.12. The hearing shall be before the department
8 in the county where the alleged events occurred,
9 unless the director and the person agree that the
10 hearing may be held in some other county, or the
11 hearing may be held by telephone conference at the
12 discretion of the agency conducting the hearing. The
13 hearing may be recorded and its scope shall be limited
14 to the issues of whether a peace officer had
15 reasonable grounds to believe that the person was
16 operating a motor vehicle in violation of section
17 321J.2 or section 321J.2A and either one or more of
18 the following:

19 a. Whether the person refused to submit to the
20 test or tests.

21 b. Whether a test was administered and the test
22 results indicated an alcohol concentration as defined
23 in equal to or in excess of the level prohibited under
24 section 321J.1 of 19 or more or whether a test was
25 administered and the test results indicated an alcohol
26 concentration as defined in section 321J.1 of 02 or
27 more pursuant to section 321J.2 or 321J.2A.

28 c. Whether a test was administered and the test
29 results indicated the presence of alcohol, a
30 controlled substance or other drug, or a combination
31 of alcohol and another drug, in violation of section
32 321J.2.

33 Sec. _____. Section 321J.15, Code 1997, is amended
34 to read as follows:

35 321J.15 EVIDENCE IN ANY ACTION.

36 Upon the trial of a civil or criminal action or
37 proceeding arising out of acts alleged to have been
38 committed by a person while operating a motor vehicle
39 in violation of section 321J.2 or 321J.2A, evidence of
40 the alcohol concentration or the presence of a
41 controlled substance or other drugs in the person's
42 body substances at the time of the act alleged as
43 shown by a chemical analysis of the person's blood,
44 breath, or urine is admissible. If it is established
45 at trial that an analysis of a breath specimen was
46 performed by a certified operator using a device
47 intended to determine alcohol concentration and
48 methods approved by the commissioner of public safety,
49 no further foundation is necessary for introduction of
50 the evidence.

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1 Sec.

2 to read as follows:

3 321J.18 OTHER EVIDENCE.

4 This chapter does not limit
5 a competent evidence bearing on the
6 a person was under the influence of
7 beverage or a controlled substance
8 of blood, breath, or urine chemical
9 hours after the person was obtained
10 following: Page 3, by inserting before line

11 Sec.

12 d, Code Supplement 1997, is amended to read
13 follows:

14 d. Violation of this subsection, with res
15 any other controlled substances, counterfeit
16 substances, or simulated substances, or less of this subject
17 class "D" felony, and in addition to marijuana, is
18 involving fifty kilograms or more of a substance, is
19 misdemeanor. However, violation of this provision, is
20 class "D" felony, and in addition to marijuana, is
21 section 902.9, subsection 4, shall be punished by a
22 fine of not less than one thousand dollars nor more
23 than five thousand dollars, or except as otherwise
24 Sec. Supplement 1997, is amended to read as follows:

25 5.

26 It is unlawful for any person who violates
27 such a substance to possess a controlled substance or
28 while acting in the course of a practitioner's
29 professional practice, or except as otherwise
30 authorized by this chapter. A person who commits a violation of
31 this subsection and who has previously been convicted
32 of violating this subsection is guilty of an
33 aggravated misdemeanor. A person who commits a
34 violation of this subsection and who has previously been
35 convicted of this subsection is guilty of a
36 class "D" felony. If the controlled substance is
37 marijuana, the punishment shall be by imprisonment in
38 the county jail for not more than six months, or by a
39 fine of not more than one thousand dollars, or by both
40 such fine and imprisonment for a first offense. If
41 the controlled substance is marijuana and the person
42 has been previously convicted of a violation of this

43 PARAGRAPH DIVIDED.

44 If the controlled substance is
45 marijuana, the punishment shall be by imprisonment in
46 the county jail for not more than six months, or by a
47 fine of not more than one thousand dollars, or by both
48 such fine and imprisonment for a first offense. If
49 the controlled substance is marijuana and the person
50 has been previously convicted of a violation of this

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1 subsection in which the controlled substance was
2 marijuana, the punishment shall be as provided in
3 section 903.1, subsection 1, paragraph "b". If the
4 controlled substance is marijuana and the person has
5 been previously convicted two or more times of a
6 violation of this subsection in which the controlled
7 substance was marijuana, the person is guilty of an
8 aggravated misdemeanor.

9 PARAGRAPH DIVIDED. All or any part of a sentence
10 imposed pursuant to this section subsection may be
11 suspended and the person placed upon probation upon
12 such terms and conditions as the court may impose
13 including the active participation by such person in a
14 drug treatment, rehabilitation or education program
15 approved by the court."

16 10. Page 3, by inserting before line 2 the
17 following:

18 "DIVISION IV

19 Sec. ____ . Section 901.5, Code 1997, is amended by
20 adding the following new subsections:

21 NEW SUBSECTION. 11. In addition to any sentence
22 or other penalty imposed against the defendant for an
23 offense under chapter 124, the court shall consider
24 the provisions of 21 U.S.C. § 862, regarding the
25 denial of federal benefits to drug traffickers and
26 possessors convicted under state or federal law, and
27 may enter an order specifying the range and scope of
28 benefits to be denied to the defendant, according to
29 the provisions of 21 U.S.C. § 862. For the purposes
30 of this subsection, "federal benefit" means the
31 issuance of any grant, contract, loan, professional
32 license, or commercial license provided by an agency
33 of the United States or through the appropriation of
34 funds of the United States, but does not include any
35 retirement, welfare, social security, health,
36 disability, veterans, public housing, or similar
37 benefit for which payments or services are required
38 for eligibility. The supreme court may adopt rules
39 establishing sentencing guidelines consistent with
40 this subsection and 21 U.S.C. § 862. The clerk of the
41 district court shall send a copy of any order issued
42 pursuant to this subsection to the denial of federal
43 benefits program of the United States department of
44 justice, along with any other forms and information
45 required by the department.

46 NEW SUBSECTION. 12. In addition to any sentence
47 or other penalty imposed against the defendant for an
48 offense under chapter 124, the court shall consider
49 the denial of state benefits to the defendant, and may
50 enter an order specifying the range and scope of

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1 benefits to be denied to the defendant, comparable to
 2 the federal benefits denied under subsection 11. For
 3 the purposes of this subsection, "state benefit" means
 4 the issuance of any grant, contract, loan,
 5 professional license, or commercial license provided
 6 by a state agency, department, program, or otherwise
 7 through the appropriation of funds of the state, but
 8 does not include any retirement, welfare, health,
 9 disability, veterans, public housing, or similar
 10 benefit. The supreme court may adopt rules
 11 establishing sentencing guidelines consistent with
 12 this subsection and comparable to the guidelines for
 13 denial of federal benefits in 21 U.S.C. § 862. The
 14 clerk of the district court shall send a copy of any
 15 order issued pursuant to this subsection to each state
 16 agency, department, or program required to deny
 17 benefits pursuant to such an order."

18 11. Page 3, by inserting before line 2 the
 19 following:

20 "DIVISION V

21 Sec. ____ . Section 811.1, subsection 2, Code
 22 Supplement 1997, is amended to read as follows:

23 2. A defendant appealing a conviction of a class
 24 "A" felony, murder, any class "B" felony included in
 25 section 707.6A, felonious assault, felonious child
 26 endangerment, sexual abuse in the second degree,
 27 sexual abuse in the third degree, kidnapping, robbery
 28 in the first degree, arson in the first degree, or
 29 burglary in the first degree, or any felony included
 30 in section 124.401, subsection 1, paragraph "a", or a
 31 violation of section 124.401, subsection 1, paragraph
 32 "b".

33 Sec. ____ . Section 901.10, Code 1997, is amended to
 34 read as follows:

35 901.10 IMPOSITION OF MANDATORY MINIMUM SENTENCES.

36 1. A court sentencing a person for the person's
 37 first conviction under section 124.406, 124.413, or
 38 902.7 may, at its discretion, sentence the person to a
 39 term less than provided by the statute if mitigating
 40 circumstances exist and those circumstances are stated
 41 specifically in the record. ~~However,~~ the

42 2. Notwithstanding subsection 1, if the sentence
 43 under section 124.413 involves a methamphetamine
 44 offense under section 124.401, subsection 1, paragraph
 45 "a" or "b", the court shall not grant any reduction of
 46 sentence unless the defendant pleads guilty. If the
 47 defendant pleads guilty, the court may, at its
 48 discretion, reduce the mandatory minimum sentence by
 49 up to one-third. If the defendant additionally
 50 cooperates in the prosecution of other persons

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1 involved in the sale or use of controlled substances,
2 and if the prosecutor requests an additional reduction
3 in defendant's sentence because of such cooperation,
4 the court may grant a further reduction in defendant's
5 mandatory minimum sentence, up to one-half of the
6 remaining mandatory minimum sentence.

7 3. The state may appeal the discretionary decision
8 on the grounds that the stated mitigating
9 circumstances do not warrant a reduction of the
10 sentence.

11 Sec. ____ . Section 907.3, subsection 1, Code
12 Supplement 1997, is amended by adding the following
13 new paragraph:

14 NEW PARAGRAPH. k. The offense is a violation of
15 section 124.401, subsection 1, paragraph "a" or "b",
16 and the controlled substance is methamphetamine.

17 Sec. ____ . Section 907.3, subsection 2, Code
18 Supplement 1997, is amended by adding the following
19 new paragraph:

20 NEW PARAGRAPH. e. The offense is a violation of
21 section 124.401, subsection 1, paragraph "a" or "b",
22 and the controlled substance is methamphetamine.

23 Sec. ____ . Section 907.3, subsection 3, Code
24 Supplement 1997, is amended by adding the following
25 new paragraph:

26 NEW PARAGRAPH. e. The offense is a violation of
27 section 124.401, subsection 1, paragraph "a" or "b",
28 and the controlled substance is methamphetamine."

29 12. Page 3, by inserting before line 2 the
30 following:

31 "DIVISION VI

32 Sec. ____ . Section 730.5, subsection 7, paragraph
33 a, as enacted in 1998 Iowa Acts, House File 299,
34 section 1, is amended to read as follows:

35 a. The collection of samples shall be performed
36 under sanitary conditions and with regard for the
37 privacy of the individual from whom the specimen is
38 being obtained and in a manner reasonably calculated
39 to preclude contamination or substitution of the
40 specimen. If the sample collected is urine,
41 procedures shall be established to provide for
42 individual privacy in the collection of the sample
43 unless there is reason to believe that a particular
44 individual subject to testing may alter or substitute
45 the urine specimen to be provided, or has previously
46 altered or substituted a urine specimen provided
47 pursuant to a drug or alcohol test. For purposes of
48 this paragraph, "individual privacy" means a location
49 at the collection site where urination can occur in
50 private, which has been secured by visual inspection

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1 to ensure that other persons are not present, which
2 provides that undetected access to the location is not
3 possible during urination, and which provides for the
4 ability to effectively restrict access to the location
5 during the time the specimen is provided. If an
6 individual providing a sample is under eighteen years
7 of age and is not considered by law to be an adult and
8 if collection of the sample is directly monitored or
9 observed by another individual, or if an individual is
10 providing a urine sample and collection of the sample
11 is directly monitored or observed by another
12 individual, the individual who is directly monitoring
13 or observing the collection shall be of the same
14 gender as the individual from whom the sample is being
15 collected.

16 Sec. ____ . Section 730.5, subsection 9, paragraph
17 a, as enacted in 1998 Iowa Acts, House File 299,
18 section 1, is amended to read as follows:

19 a. (1) Drug or alcohol testing or retesting by an
20 employer shall be carried out within the terms of a
21 written policy which has been provided to every
22 employee subject to testing, and is available for
23 review by employees and prospective employees. If an
24 employee or prospective employee is a minor, the
25 employer shall provide a copy of the written policy to
26 a parent of the employee or prospective employee and
27 shall obtain a receipt or acknowledgement from the
28 parent that a copy of the policy has been received.
29 Providing a copy of the written policy to a parent of
30 a minor by certified mail, return receipt requested,
31 shall satisfy the requirements of this subparagraph.

32 (2) In addition, the written policy shall provide
33 that any notice required by subsection 7, paragraph
34 "i", to be provided to an individual pursuant to a
35 drug or alcohol test conducted pursuant to this
36 section, shall also be provided to the parent of the
37 individual by certified mail, return receipt
38 requested, if the individual tested is a minor and a
39 parent of the minor has not specifically waived the
40 requirement to be provided notice. If a parent of the
41 minor has waived the requirement to provide notice,
42 the employer shall not be required to provide notice
43 to any person other than the individual tested.

44 (3) In providing information or notice to a parent
45 as required by this paragraph, an employer shall rely
46 on the information regarding the identity of a parent
47 as provided by the minor.

48 (4) For purposes of this paragraph, "minor" means
49 an individual who is under eighteen years of age and
50 is not considered by law to be an adult, and "parent"

S-5468

-12-

1 means one biological or adoptive parent, a stepparent,
2 or a legal guardian or custodian of the minor."

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

5 "DIVISION VII

6 Sec. ____ . IMPLEMENTATION OF ACT. Section 25B.2,
7 subsection 3, shall not apply to this Act.

8 Sec. ____ . EFFECTIVE DATES. Division VI of this
9 Act takes effect upon enactment or April 16, 1998,
10 whichever is later."

11 14. Page 3, by inserting before line 2 the
12 following:

13 "Sec. ____ . RETROACTIVE APPLICABILITY. Sections
14 101 and 102 of this Act are retroactively applicable
15 to July 1, 1997, and are applicable on and after that
16 date."

17 15. Page 3, line 2, by striking the word "DATE."
18 and inserting the following: "AND APPLICABILITY
19 DATES. Section 103 of this Act is retroactively
20 applicable to July 1, 1997, and is applicable on and
21 after that date."

22 16. Page 3, line 2, by striking the word "This"
23 and inserting the following: "Division I of this".

24 17. Title page, line 1, by inserting after the
25 word "Act" the following: "relating to certain drug
26 and alcohol abuse and certain offenses which carry a
27 mandatory minimum sentence, by".

28 18. Title page, line 5, by inserting after the
29 word "device," the following: "requiring the
30 imposition of a mandatory minimum penalty for certain
31 methamphetamine offenses, prohibiting the granting of
32 a deferred judgment or sentence or a suspended
33 sentence for certain methamphetamine offenses,
34 providing that persons convicted of certain
35 methamphetamine offenses are ineligible for bail upon
36 appeal,".

37 19. Title page, line 7, by inserting after the
38 word "violations," the following: "increasing and
39 adding certain penalties for certain drug offenses,
40 providing for the denial of federal benefits to
41 persons convicted of drug-related offenses, providing
42 for an operating while intoxicated offense for persons
43 driving after taking certain controlled substances,
44 providing privacy and notice in certain drug and
45 alcohol testing situations, making related changes,
46 making penalties applicable,".

47 20. Title page, lines 7 and 8, by striking the
48 words "and providing an effective date" and inserting
49 the following: "providing a limitation on the
50 applicability of the requirement for an ignition

1 interlock device as a prerequisite to obtaining a
2 temporary restricted license, and providing effective
3 and retroactive applicability dates".

4 21. By renumbering, relettering, or redesignating
5 and correcting internal references as necessary.

RECEIVED FROM THE HOUSE

Senate Concurred 4/6/98 (p. 1080)

SENATE FILE 2391

S-5527

1 amend the amendment, S-5488, to Senate File 2391,
2 as amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 1, by inserting before line 6 the
5 following:

6 "Sec. ____ Page 1, by inserting after line 10 the
7 following:

8 "Sec. 1000. Section 321J.2, Code Supplement 1997,
9 is amended by adding the following new subsection:

10 NEW SUBSECTION. 5. Notwithstanding subsection 4
11 and section 321J.2, subsection 4, paragraph "a", the
12 six-year time frame in effect until July 1, 1997,
13 shall be used for determining whether an offense is a
14 first, second, or subsequent violation under chapter
15 321J, for offenses committed prior to July 1, 1997.
16 In addition, all revocation periods, minimum periods
17 of ineligibility, and ignition interlock requirements
18 in chapter 321J changed in 1997 Iowa Acts, chapter
19 177, shall apply only to offenses committed on or
20 after July 1, 1997. For offenses committed prior to
21 July 1, 1997, the revocation periods, minimum periods
22 of ineligibility, and ignition interlock requirements
23 applicable until July 1, 1997, shall apply.""

24 2. Page 13, by inserting before line 11 the
25 following:

26 "Sec. ____ RETROACTIVE APPLICABILITY. Section
27 1000 of this Act is retroactively applicable to July
28 1, 1997, and is applicable on and after that date.""

29 3. Page 14, line 2, by inserting after the word
30 "license," the following: "reinstating the six-year
31 time frame, certain revocation and ineligibility
32 periods, and certain ignition interlock requirements
33 applicable to operating-while-intoxicated violations
34 committed prior to July 1, 1997,".

35 4. By renumbering as necessary.

By KITTY REHBERG
NEAL SCHUERER
JACK RIFE

S-5527 FILED APRIL 6, 1998
LOST

(p. 1053)

SENATE FILE 2391

S-5492

- 1 Amend the House amendment, S-5468, to Senate File
2 2391, as amended, passed, and reprinted by the Senate,
3 as follows:
4 1. Page 3, by inserting before line 14 the
5 following:
6 "c. The department of public safety shall adopt
7 nationally accepted standards for determining
8 detectable levels of controlled substances in the
9 division of criminal investigation's initial
10 laboratory screening test for controlled substances."
11 2. Page 3, by striking lines 25 through 36.
12 3. Page 4, by striking lines 18 through 22.
13 4. By renumbering as necessary.

By ANDY MCKEAN

S-5492 FILED APRIL 2, 1998

ADOPTED

(P.1046)

SENATE FILE 2391

S-5494

- 1 Amend the amendment, S-5468, to Senate File 2391,
2 as amended, passed, and reprinted by the Senate, as
3 follows:
4 1. Page 1, by striking lines 37 through 45.
5 2. Page 13, by striking lines 17 through 21.
6 3. Page 13, line 49, by striking the words "a
7 limitation on the".
8 4. By striking page 13, line 50, through page 14,
9 line 1.
10 5. Page 14, line 2, by striking the words
11 "temporary restricted license, and providing".
12 6. By renumbering as necessary.

By ANDY MCKEAN

S-5494 FILED APRIL 2, 1998

ADOPTED

(P.1046)

SENATE FILE 2391

S-5531

1 Amend the amendment, S-5468, to Senate File 2391,
2 as amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 1, by inserting before line 6 the
5 following:

6 "_____. Page 1, by inserting after line 10 the
7 following:

8 "Sec. 1000. Section 321.12, Code Supplement 1997,
9 is amended by adding the following new subsection:

10 NEW SUBSECTION. 5. Notwithstanding subsection 4
11 and section 321J.2, subsection 4, paragraph "a", the
12 twelve-year time frame for determining whether an
13 offense is a first, second, or subsequent violation
14 under chapter 321J shall apply prospectively from July
15 1, 1997, in the following manner:

16 The first offense by a person under chapter 321J
17 committed on or after July 1, 1997, shall be
18 considered the person's first offense within the
19 twelve-year calculation period, regardless of any
20 offenses committed prior to July 1, 1997, whether or
21 not such offenses are reflected on the person's
22 operating records.""

23 2. Page 13, by inserting before line 11 the
24 following:

25 "Sec. _____. RETROACTIVE APPLICABILITY. Section
26 1000 of this Act is retroactively applicable to July
27 1, 1997, and is applicable on and after that date."

28 3. By renumbering as necessary.

By JACK RIPE

S-5531 FILED APRIL 6, 1998

LOST

(p. 1079)

SENATE FILE 2391

S-5528

- 1 Amend the amendment, S-5468, to Senate File 2391,
2 as amended, passed, and reprinted by the Senate, as
3 follows:
- 4 1. Page 1, by inserting before line 6 the
5 following:
6 "_____. Page 1, by inserting after line 10 the
7 following:
8 "Sec. 1000. Section 321.12, Code Supplement 1997,
9 is amended by adding the following new subsection:
10 NEW SUBSECTION. 5. Notwithstanding subsection 4
11 and section 321J.2, subsection 4, paragraph "a", the
12 six-year time frame in effect until July 1, 1997,
13 shall be used for determining whether an offense is a
14 first, second, or subsequent violation under chapter
15 321J, for offenses committed prior to July 1, 1997."
16 2. Page 13, by inserting before line 11 the
17 following:
18 "Sec. _____. RETROACTIVE APPLICABILITY. Section
19 1000 of this Act is retroactively applicable to July
20 1, 1997, and is applicable on and after that date."
21 3. Page 14, line 2, by inserting after the word
22 "license," the following: "reinstating the six-year
23 time frame applicable to operating-while-intoxicated
24 violations committed prior to July 1, 1997,".
25 4. By renumbering as necessary.

By JACK RIFE

S-5528 FILED APRIL 6, 1998

LOST

(p. 1079)

SENATE FILE 2391

S-5500

- 1 Amend the House amendment, S-5468, to Senate File
2 2391, as amended, passed, and reprinted by the Senate,
3 as follows:
- 4 1. Page 11, line 43, by striking the words
5 "reason to believe" and inserting the following: "a
6 reasonable suspicion".
7 2. Page 12, by striking lines 6 through 10 and
8 inserting the following: "individual is providing a
9 sample and collection of the sample".
10 3. Page 12, by striking lines 38 through 43 and
11 inserting the following: "requested, if the
12 individual tested is a minor."

By MICHAEL E. GRONSTAL

S-5500 FILED APRIL 6, 1998

ADOPTED

(p. 1053)

SENATE FILE 2391

S-5535

1 Amend the amendment, S-5466, to Senate File 2391,
2 as amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 1, by inserting before line 13 the
5 following:

6 "Sec. ____ . Section 321J.4, subsection 9, Code
7 Supplement 1997, is amended to read as follows:

8 9. A Notwithstanding any minimum period of
9 ineligibility specified in this chapter, a person
10 whose motor vehicle license has either been revoked
11 under this chapter, or revoked or suspended under
12 chapter 321 solely for violations of this chapter, or
13 who has been determined to be a habitual offender
14 under chapter 321 based solely on violations of this
15 chapter, and who is not eligible for a temporary
16 restricted license under this chapter may petition the
17 court ~~upon the expiration of the minimum period of~~
18 ~~ineligibility~~ for a temporary restricted license
19 provided for under this section or section 321J.9,
20 321J.12, or 321J.20 for an order to the department to
21 require the department to issue a temporary restricted
22 license to the person notwithstanding section 321.560.
23 The petition shall include a current certified copy of
24 the petitioner's official driving record issued by the
25 department. Upon the filing of a petition for a
26 temporary restricted license under this section, the
27 clerk of the district court in the county where the
28 violation that resulted in the revocation occurred
29 shall send notice of the petition to the department
30 and the prosecuting attorney. The department and the
31 prosecuting attorney shall each be given an
32 opportunity to respond to and request a hearing on the
33 petition. The court shall determine if the temporary
34 restricted license is necessary for the person to
35 maintain the person's present employment. However, a
36 temporary restricted license shall not be ordered or
37 issued for a violation of section 321J.2A or to a
38 person under the age of twenty-one whose license is
39 revoked under this section or section 321J.9 or
40 321J.12. If the court determines that the temporary
41 restricted license is necessary for the person to
42 maintain the person's present employment, and that the
43 minimum period of ineligibility for receipt of a
44 temporary license has expired, the court shall order
45 the department to issue to the person a temporary
46 restricted license conditioned upon the person's
47 certification to the court of the installation of
48 approved ignition interlock devices in all motor
49 vehicles that it is necessary for the person to
50 operate to maintain the person's present employment.

S-5535

S-5535

Page 2

1 Section 321.561 does not apply to a person operating a
2 motor vehicle in the manner permitted under this
3 subsection. If the person operates a motor vehicle
4 which does not have an approved ignition interlock
5 device or if the person tampers with or circumvents an
6 ignition interlock device, in addition to other
7 penalties provided, the person's temporary restricted
8 license shall be revoked. A person holding a
9 temporary restricted license issued under this
10 subsection shall not operate a commercial motor
11 vehicle, as defined in section 321.1, on a highway if
12 a commercial driver's license is required for the
13 person to operate the commercial motor vehicle."
14 2. By renumbering as necessary.

By JACK RIFE

S-5535 FILED APRIL 6, 1998

LOST

(p. 1079)

SENATE AMENDMENT TO HOUSE AMENDMENT TO S. F. 2391

H-8958

- 1 Amend the amendment, S-5468, to Senate File 2391,
2 as amended, passed, and reprinted by the Senate, as
3 follows:
- 4 1. Page 1, by striking lines 35 through 45.
5 2. Page 3, by inserting before line 14 the
6 following:
7 "c. The department of public safety shall adopt
8 nationally accepted standards for determining
9 detectable levels of controlled substances in the
10 division of criminal investigation's initial
11 laboratory screening test for controlled substances."
- 12 3. Page 3, by striking lines 25 through 36.
13 4. Page 4, by striking lines 18 through 22.
14 5. Page 11, line 43, by striking the words
15 "reason to believe" and inserting the following: "a
16 reasonable suspicion".
- 17 6. Page 12, by striking lines 6 through 10 and
18 inserting the following: "individual is providing a
19 sample and collection of the sample".
- 20 7. Page 12, by striking lines 38 through 43 and
21 inserting the following: "requested, if the
22 individual tested is a minor."
- 23 8. Page 13, by striking lines 17 through 21.
24 9. Page 13, line 49, by striking the words "a
25 limitation on the".
- 26 10. By striking page 13, line 50, through page
27 14, line 1.
- 28 11. Page 14, line 2, by striking the words
29 "temporary restricted license, and providing".
30 12. By renumbering, relettering, or redesignating
31 and correcting internal references as necessary.

RECEIVED FROM THE SENATE

H-8960 FILED APRIL 6, 1998

House Concurred 4/8/98 (p.1397)

McKean
Halvarson
Redfern

SSB 2165

Judiciary

SENATE FILE ^{Discovered by} (SF) HF 2391
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON MCKEAN)

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

A BILL FOR

1 An Act allowing probation for some operating-while-intoxicated
2 offenders after service of a mandatory minimum sentence,
3 permitting licensed substance abuse agencies to offer a
4 drinking drivers course, permitting a .15 blood alcohol level
5 to control the penalties applicable to an offender regardless
6 of the margin of error associated with the test device, and
7 requiring the deletion from motor vehicle records after twelve
8 years of certain youth license revocations for alcohol
9 violations.

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

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1 Section 1. Section 321.12, subsection 4, Code Supplement
2 1997, is amended to read as follows:

3 4. The director shall not destroy any operating records
4 pertaining to arrests or convictions for operating while
5 intoxicated, in violation of section 321J.2 or operating
6 records pertaining to revocations for violations of section
7 321J.2A, except that a conviction or revocation under section
8 321J.2 or 321J.2A shall be deleted from the operating records
9 twelve years after the date of conviction or the effective
10 date of revocation.

11 Sec. 2. Section 321J.2, subsection 3, paragraph a,
12 unnumbered paragraph 1, Code Supplement 1997, is amended to
13 read as follows:

14 Notwithstanding the provisions of sections 901.5 and 907.3,
15 the court shall not defer judgment or sentencing, or suspend
16 execution of any ~~part-of-the~~ mandatory minimum sentence
17 applicable to the defendant under subsection 2, and shall not
18 suspend execution of any other part of a sentence imposed
19 pursuant to subsection 2, if any of the following apply:

20 Sec. 3. Section 321J.2, subsection 3, paragraph a,
21 subparagraph (1), Code Supplement 1997, is amended to read as
22 follows:

23 (1) If the defendant's alcohol concentration established
24 by the results of an analysis of a specimen of the defendant's
25 blood, breath, or urine withdrawn in accordance with this
26 chapter exceeds .15, regardless of whether of not the alcohol
27 concentration indicated by the chemical test minus the
28 established margin or error inherent in the device or method
29 used to conduct the test equals an alcohol concentration of
30 .15 or more.

31 Sec. 4. Section 321J.22, subsection 2, Code Supplement
32 1997, is amended to read as follows:

33 2. a. The course provided according to this section shall
34 be offered on a regular basis at each community college as
35 defined in section 260C.2.

1 b. Enrollment in the courses is not limited to persons
2 ordered to enroll, attend, and successfully complete the
3 course required under sections 321J.2 and 321J.17, subsection
4 2.

5 c. The course required by this section subsection shall be
6 taught by the community colleges under the department of
7 education and approved by the department.

8 d. The department of education shall establish reasonable
9 fees to defray the expense of obtaining classroom space,
10 instructor salaries, and class materials.

11 2A. The course provided according to this section may also
12 be offered by a substance abuse agency licensed pursuant to
13 chapter 125.

14 a. Enrollment in the course is not limited to persons
15 required to enroll, attend, and successfully complete a course
16 for drinking drivers pursuant to this chapter.

17 b. The course provided according to this subsection shall
18 be taught by qualified staff of the licensed substance abuse
19 agency who are trained in the state-approved curriculum.

20 c. The division of substance abuse of the department of
21 public health, may establish reasonable fees to defray the
22 expenses associated with offering the course.

23 2B. A person shall not be denied enrollment in a course by
24 reason-of for drinking drivers that is required by a court
25 solely due to the person's indigency.

26 Sec. 5. Section 321J.22, subsections 4 and 5, Code
27 Supplement 1997, is amended to read as follows:

28 4. a. The department of education shall prepare a list of
29 the locations of the courses taught under this section, the
30 dates and times taught, the procedure for enrollment, and the
31 schedule of course fees. The list shall be kept current and a
32 copy of the list shall be sent to each court having
33 jurisdiction over offenses provided in this chapter.

34 5- b. The department of education shall maintain
35 enrollment, attendance, successful and nonsuccessful

1 unsuccessful completion data on the persons ordered to enroll,
2 attend, and successfully complete a course for drinking
3 drivers. This data shall be forwarded to the court.

4 5. a. Licensed substance abuse agencies offering courses
5 pursuant to this section shall prepare a list of the locations
6 of the courses, the dates and times for the courses, the
7 procedure for enrollment, and the schedule of course fees.
8 The list shall be updated periodically, and a copy of each
9 updated list shall be sent to district courts in the same area
10 as the substance abuse agency.

11 b. Each licensed substance abuse agency offering courses
12 under this section shall maintain attendance, successful and
13 unsuccessful completion data on the persons ordered to enroll,
14 attend, and successfully complete a course for drinking
15 drivers. This data shall be forwarded to the appropriate
16 district court.

17 Sec. 6. Section 907.3, subsection 1, paragraph g,
18 subparagraph (1), Code Supplement 1997, is amended to read as
19 follows:

20 (1) If the defendant's alcohol concentration established
21 by the results of an analysis of a specimen of the defendant's
22 blood, breath, or urine withdrawn in accordance with chapter
23 321J exceeds .15, regardless of whether or not the alcohol
24 concentration indicated by the chemical test minus the
25 established margin of error inherent in the device or method
26 used to conduct the test equals an alcohol concentration of
27 .15 or more.

28 Sec. 7. Section 907.3, subsection 2, paragraph c,
29 subparagraph (1), Code Supplement 1997, is amended to read as
30 follows:

31 (1) If the defendant's alcohol concentration established
32 by the results of an analysis of a specimen of the defendant's
33 blood, breath, or urine withdrawn in accordance with chapter
34 321J exceeds .15, regardless of whether or not the alcohol
35 concentration indicated by the chemical test minus the

1 established margin of error inherent in the device or method
2 used to conduct the test equals an alcohol concentration of
3 .15 or more.

4 Sec. 8. Section 907.3, subsection 3, paragraph c,
5 unnumbered paragraph 1, Code Supplement 1997, is amended to
6 read as follows:

7 A mandatory minimum sentence imposed pursuant to a
8 violation of section 321J.2, subsection 17; furthermore, the
9 court shall not suspend any part of a sentence imposed
10 pursuant to section 321J.2, subsection 2, beyond the mandatory
11 minimum if any of the following apply:

12 Sec. 9. Section 907.3, subsection 3, paragraph c,
13 subparagraph (1), Code Supplement 1997, is amended to read as
14 follows:

15 (1) If the defendant's alcohol concentration established
16 by the results of an analysis of a specimen of the defendant's
17 blood, breath, or urine withdrawn in accordance with chapter
18 321J exceeds .15, regardless of whether or not the alcohol
19 concentration indicated by the chemical test minus the
20 established margin of error inherent in the device or method
21 used to conduct the test equals an alcohol concentration of
22 .15 or more.

23 EXPLANATION

24 This bill makes amendments to certain Code sections
25 affected by 1997 legislation pertain to operating-while-
26 intoxicated (OWI) offenses.

27 The bill amends Code section 321.12, so that revocations
28 under Code section 321J.2A will be deleted from motor vehicle
29 records according to the same rules that apply to OWI
30 violations under Code section 321J.2.

31 The bill amends Code section 321J.2 to expressly state that
32 a mandatory minimum sentence imposed under the section cannot
33 be suspended, and that a sentence beyond the mandatory minimum
34 cannot be suspended in certain cases. This change, in
35 conjunction with a related change to Code section 907.3,

1 subsection 3, will permit the court to suspend execution of a
2 sentence for certain less serious offenders, and impose a
3 period of probation after service of the mandatory minimum
4 sentence.

5 The bill amends Code section 321J.2 and all subsections of
6 Code section 907.3 to state that a defendant who tests .15 or
7 higher shall be subject to the conditions applicable to
8 persons registering .15 or higher, regardless of the standard
9 of error associated with the test device.

10 The bill amends Code section 321J.22 to provide that
11 substance abuse agencies may offer the course for drinking
12 drivers regulated under that Code section, in addition to
13 community colleges, and that the substance abuse division of
14 the department of public health may set fees and the agencies
15 shall keep records and report to the court on the status of
16 offenders enrolling in the course, on a comparable basis to
17 the community colleges.

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SENATE FILE 2391

AN ACT

RELATING TO CERTAIN DRUG AND ALCOHOL ABUSE AND CERTAIN OFFENSES WHICH CARRY A MANDATORY MINIMUM SENTENCE, BY ALLOWING PROBATION FOR SOME OPERATING-WHILE-INTOXICATED OFFENDERS AFTER SERVICE OF A MANDATORY MINIMUM SENTENCE, PERMITTING A .15 BLOOD ALCOHOL LEVEL TO CONTROL THE PENALTIES APPLICABLE TO AN OFFENDER REGARDLESS OF THE MARGIN OF ERROR ASSOCIATED WITH THE TEST DEVICE, REQUIRING THE IMPOSITION OF A MANDATORY MINIMUM PENALTY FOR CERTAIN METHAMPHETAMINE OFFENSES, PROHIBITING THE GRANTING OF A DEFERRED JUDGMENT OR SENTENCE OR A SUSPENDED SENTENCE FOR CERTAIN METHAMPHETAMINE OFFENSES, PROVIDING THAT PERSONS CONVICTED OF CERTAIN METHAMPHETAMINE OFFENSES ARE INELIGIBLE FOR BAIL UPON APPEAL, REQUIRING THE DELETION FROM MOTOR VEHICLE RECORDS AFTER TWELVE YEARS OF CERTAIN YOUTH LICENSE REVOCATIONS FOR ALCOHOL VIOLATIONS, INCREASING AND ADDING CERTAIN PENALTIES FOR CERTAIN DRUG OFFENSES, PROVIDING FOR THE DENIAL OF FEDERAL BENEFITS TO PERSONS CONVICTED OF DRUG-RELATED OFFENSES, PROVIDING FOR AN OPERATING WHILE INTOXICATED OFFENSE FOR PERSONS DRIVING AFTER TAKING CERTAIN CONTROLLED SUBSTANCES, PROVIDING PRIVACY AND NOTICE IN CERTAIN DRUG AND ALCOHOL TESTING SITUATIONS, MAKING RELATED CHANGES, MAKING PENALTIES APPLICABLE, PROVIDING EFFECTIVE AND RETROACTIVE APPLICABILITY DATES.

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

DIVISION I

Section 1. Section 321.12, subsection 4, Code Supplement 1997, is amended to read as follows:

4. The director shall not destroy any operating records pertaining to arrests or convictions for operating while

intoxicated, in violation of section 321J.2 or operating records pertaining to revocations for violations of section 321J.2A, except that a conviction or revocation under section 321J.2 or 321J.2A shall be deleted from the operating records twelve years after the date of conviction or the effective date of revocation.

Sec. 2. Section 321J.2, subsection 3, paragraph a, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

Notwithstanding the provisions of sections 901.5 and 907.3, the court shall not defer judgment or sentencing, or suspend execution of any part-of-the mandatory minimum sentence of incarceration applicable to the defendant under subsection 2, and shall not suspend execution of any other part of a sentence not involving incarceration imposed pursuant to subsection 2, if any of the following apply:

Sec. 3. Section 321J.2, subsection 3, paragraph a, subparagraph (1), Code Supplement 1997, is amended to read as follows:

(1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with this chapter exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

Sec. 4. Section 321J.4, subsection 9, Code Supplement 1997, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Notwithstanding any provision of this chapter to the contrary, the court may order the department to issue a temporary restricted license to a person otherwise eligible for a temporary restricted license under this subsection, whose period of revocation under this chapter

has expired, but who has not met all requirements for reinstatement of the person's motor vehicle license or nonresident operating privileges.

Sec. 5. Section 321J.20, Code Supplement 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 7. Notwithstanding any provision of this chapter to the contrary, the department may issue a temporary restricted license to a person otherwise eligible for a temporary restricted license under this section, whose period of revocation under this chapter has expired, but who has not met all requirements for reinstatement of the person's motor vehicle license or nonresident operating privileges.

Sec. 6. Section 907.3, subsection 1, paragraph g, subparagraph (1), Code Supplement 1997, is amended to read as follows:

(1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with chapter 321J exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

Sec. 7. Section 907.3, subsection 2, paragraph c, subparagraph (1), Code Supplement 1997, is amended to read as follows:

(1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with chapter 321J exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

Sec. 8. Section 907.3, subsection 3, paragraph c, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

A mandatory minimum sentence of incarceration imposed pursuant to a violation of section 321J.2, subsection 1; furthermore, the court shall not suspend any part of a sentence not involving incarceration imposed pursuant to section 321J.2, subsection 2, beyond the mandatory minimum if any of the following apply:

Sec. 9. Section 907.3, subsection 3, paragraph c, subparagraph (1), Code Supplement 1997, is amended to read as follows:

(1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with chapter 321J exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

DIVISION II

Sec. 10. Section 321J.1, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 3A. "Controlled substance" means any drug, substance, or compound that is listed in section 124.204 or 124.206, or any metabolite or derivative of the drug, substance, or compound.

Sec. 11. Section 321J.2, subsection 1, Code Supplement 1997, is amended to read as follows:

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

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

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

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

Sec. 12. Section 321J.2, subsections 7 and 8, Code Supplement 1997, are amended to read as follows:

7. a. Division I of this section does not apply to a person operating a motor vehicle while under the influence of a drug if the substance was prescribed for the person and was taken under the prescription and in accordance with the directions of a medical practitioner as defined in chapter 155A or if the substance was dispensed by a pharmacist without a prescription pursuant to the rules of the board of pharmacy examiners, if there is no evidence of the consumption of alcohol and the medical practitioner or pharmacist had not directed the person to refrain from operating a motor vehicle.

b. When charged with a violation of subsection 1, paragraph "c", a person may assert, as an affirmative defense, that the controlled substance present in the person's blood or urine was prescribed or dispensed for the person and was taken in accordance with the directions of a practitioner and the labeling directions of the pharmacy, as that person and place of business are defined in section 155A.3.

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

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

b. The presence of a controlled substance or other drug established by the results of analysis of a specimen of the

defendant's blood or urine withdrawn within two hours after the defendant was driving or in physical control of a motor vehicle is presumed to show the presence of such controlled substance or other drug in the defendant at the time of driving or being in physical control of the motor vehicle.

c. The department of public safety shall adopt nationally accepted standards for determining detectable levels of controlled substances in the division of criminal investigation's initial laboratory screening test for controlled substances.

Sec. 13. Section 321J.2, subsection 10, Code Supplement 1997, is amended to read as follows:

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

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

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

Sec. 15. Section 321J.6, subsection 1, paragraphs d and f, Code 1997, are amended to read as follows:

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

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

Sec. 16. Section 321J.6, subsection 3, Code 1997, is amended to read as follows:

3. Notwithstanding subsection 2, if the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol, or a combination of alcohol and another drug, a blood or urine test may shall be required even after ~~a blood or breath~~ another type of test has been administered. Section 321J.9 applies to a refusal to submit to a chemical test of urine or blood requested under this subsection.

Sec. 17. Section 321J.8, subsection 2, Code 1997, is amended to read as follows:

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

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

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

b. If a person from whom a specimen is to be withdrawn objects to the withdrawal of blood, and the warrant may be executed as follows:

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

(2) If the testimony in support of the warrant sets forth facts and information that the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol, or a combination of alcohol and another drug, a urine sample shall be collected in lieu of a blood sample, if the person is capable of giving a urine sample and the sample can be collected without the need to physically compel the execution of the warrant.

Sec. 19. Section 321J.11, unnumbered paragraph 1, Code 1997, is amended to read as follows:

Only a licensed physician, licensed physician assistant as defined in section 148C.1, medical technologist, or registered nurse, acting at the request of a peace officer, may withdraw a specimen of blood for the purpose of determining the alcohol concentration or the presence of a controlled substance or other drugs. However, any peace officer, using devices and

methods approved by the commissioner of public safety, may take a specimen of a person's breath or urine for the purpose of determining the alcohol concentration, or may take a specimen of a person's urine for the purpose of determining the presence of a controlled substance or other drugs. Only new equipment kept under strictly sanitary and sterile conditions shall be used for drawing blood.

Sec. 20. Section 321J.12, subsections 1, 3, 4, and 6, Code Supplement 1997, are amended to read as follows:

1. Upon certification, subject to penalty for 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.2, 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 the presence of a controlled substance or other drug, or an alcohol concentration as defined in equal to or in excess of the level prohibited by section 321J.2, or a combination of alcohol and another drug in violation of section 321J.2, the department shall revoke the person's motor vehicle license or nonresident operating privilege for the following periods of time:

- a. One hundred eighty days if the person has had no revocation under this chapter.
- b. One year if the person has had a previous revocation under this chapter.

3. The effective date of the revocation shall be ten days after the department has mailed notice of revocation to the person by certified mail. The peace officer who requested or directed the administration of the chemical test may, on behalf of the department, serve immediate notice of revocation on a person whose test results indicated the presence of a controlled substance or other drug, or an alcohol concentration of--10-or-more equal to or in excess of the

level prohibited by section 321J.2, or a combination of alcohol and another controlled substance or drug in violation of section 321J.2.

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

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

Sec. 21. Section 321J.13, subsection 2, Code Supplement 1997, is amended to read as follows:

2. The department shall grant the person an opportunity to be heard within forty-five days of receipt of a request for a hearing if the request is made not later than ten days after receipt of notice of revocation served pursuant to section 321J.9 or 321J.12. The hearing shall be 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 may be recorded and its scope shall be limited to the issues of whether a peace officer had reasonable grounds to believe that the person was operating a

motor vehicle in violation of section 321J.2 or section 321J.2A and either one or more of the following:

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

b. Whether a test was administered and the test results indicated an alcohol concentration as defined in equal to or in excess of the level prohibited under section 321J.2 or more or whether a test was administered and the test results indicated an alcohol concentration as defined in section 321J.2 or more pursuant to section 321J.2 or 321J.2A.

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

Sec. 22. Section 321J.15, Code 1997, is amended to read as follows:

321J.15 EVIDENCE IN ANY ACTION.

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

Sec. 23. Section 321J.18, Code 1997, is amended to read as follows:

321J.18 OTHER EVIDENCE.

This chapter does not limit the introduction of any competent evidence bearing on the question of whether a person was under the influence of an alcoholic beverage or a controlled substance or other drug, including the results of chemical tests of specimens of blood, breath, or urine obtained more than two hours after the person was operating a motor vehicle.

DIVISION III

Sec. 24. Section 124.401, subsection 1, paragraph d, Code Supplement 1997, is amended to read as follows:

d. Violation of this subsection, with respect to any other controlled substances, counterfeit substances, or simulated controlled substances classified in schedule IV or V is an aggravated misdemeanor. However, violation of this subsection involving fifty kilograms or less of marijuana, is a class "D" felony, and in addition to the provisions of section 902.9, subsection 4, shall be punished by a fine of not less than one thousand dollars nor more than five seven thousand five hundred dollars.

Sec. 25. Section 124.401, subsection 5, Code Supplement 1997, is amended to read as follows:

5. It is unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection is guilty of a serious misdemeanor for a first offense. A person who commits a violation of this subsection and who has previously been convicted of violating this subsection is guilty of an aggravated misdemeanor. A person who commits a violation of this subsection and has previously been convicted two or more times of violating this subsection is guilty of a class "D" felony.

PARAGRAPH DIVIDED. If the controlled substance is marijuana, the punishment shall be by imprisonment in the county jail for not more than six months or by a fine of not more than one thousand dollars, or by both such fine and imprisonment for a first offense. If the controlled substance is marijuana and the person has been previously convicted of a violation of this subsection in which the controlled substance was marijuana, the punishment shall be as provided in section 903.1, subsection 1, paragraph "b". If the controlled substance is marijuana and the person has been previously convicted two or more times of a violation of this subsection in which the controlled substance was marijuana, the person is guilty of an aggravated misdemeanor.

PARAGRAPH DIVIDED. All or any part of a sentence imposed pursuant to this section subsection may be suspended and the person placed upon probation upon such terms and conditions as the court may impose including the active participation by such person in a drug treatment, rehabilitation or education program approved by the court.

DIVISION IV

Sec. 26. Section 901.5, Code 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 11. In addition to any sentence or other penalty imposed against the defendant for an offense under chapter 124, the court shall consider the provisions of 21 U.S.C. § 862, regarding the denial of federal benefits to drug traffickers and possessors convicted under state or federal law, and may enter an order specifying the range and scope of benefits to be denied to the defendant, according to the provisions of 21 U.S.C. § 862. For the purposes of this subsection, "federal benefit" means the issuance of any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or through the appropriation of funds of the United States, but does not include any retirement, welfare, social security, health,

disability, veterans, public housing, or similar benefit for which payments or services are required for eligibility. The supreme court may adopt rules establishing sentencing guidelines consistent with this subsection and 21 U.S.C. § 862. The clerk of the district court shall send a copy of any order issued pursuant to this subsection to the denial of federal benefits program of the United States department of justice, along with any other forms and information required by the department.

NEW SUBSECTION. 12. In addition to any sentence or other penalty imposed against the defendant for an offense under chapter 124, the court shall consider the denial of state benefits to the defendant, and may enter an order specifying the range and scope of benefits to be denied to the defendant, comparable to the federal benefits denied under subsection 11. For the purposes of this subsection, "state benefit" means the issuance of any grant, contract, loan, professional license, or commercial license provided by a state agency, department, program, or otherwise through the appropriation of funds of the state, but does not include any retirement, welfare, health, disability, veterans, public housing, or similar benefit. The supreme court may adopt rules establishing sentencing guidelines consistent with this subsection and comparable to the guidelines for denial of federal benefits in 21 U.S.C. § 862. The clerk of the district court shall send a copy of any order issued pursuant to this subsection to each state agency, department, or program required to deny benefits pursuant to such an order.

DIVISION V

Sec. 27. Section 811.1, subsection 2, Code Supplement 1997, is amended to read as follows:

2. A defendant appealing a conviction of a class "A" felony, murder, any class "B" felony included in section 707.6A, felonious assault, felonious child endangerment, sexual abuse in the second degree, sexual abuse in the third

degree, kidnapping, robbery in the first degree, arson in the first degree, or burglary in the first degree, or any felony included in section 124.401, subsection 1, paragraph "a", or a violation of section 124.401, subsection 1, paragraph "b".

Sec. 28. Section 901.10, Code 1997, is amended to read as follows:

901.10 IMPOSITION OF MANDATORY MINIMUM SENTENCES.

1. A court sentencing a person for the person's first conviction under section 124.406, 124.413, or 902.7 may, at its discretion, sentence the person to a term less than provided by the statute if mitigating circumstances exist and those circumstances are stated specifically in the record.

However, the

2. Notwithstanding subsection 1, if the sentence under section 124.413 involves a methamphetamine offense under section 124.401, subsection 1, paragraph "a" or "b", the court shall not grant any reduction of sentence unless the defendant pleads guilty. If the defendant pleads guilty, the court may, at its discretion, reduce the mandatory minimum sentence by up to one-third. If the defendant additionally cooperates in the prosecution of other persons involved in the sale or use of controlled substances, and if the prosecutor requests an additional reduction in defendant's sentence because of such cooperation, the court may grant a further reduction in defendant's mandatory minimum sentence, up to one-half of the remaining mandatory minimum sentence.

3. The state may appeal the discretionary decision on the grounds that the stated mitigating circumstances do not warrant a reduction of the sentence.

Sec. 29. Section 907.3, subsection 1, Code Supplement 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. k. The offense is a violation of section 124.401, subsection 1, paragraph "a" or "b", and the controlled substance is methamphetamine.

Sec. 30. Section 907.3, subsection 2, Code Supplement 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. e. The offense is a violation of section 124.401, subsection 1, paragraph "a" or "b", and the controlled substance is methamphetamine.

Sec. 31. Section 907.3, subsection 3, Code Supplement 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. e. The offense is a violation of section 124.401, subsection 1, paragraph "a" or "b", and the controlled substance is methamphetamine.

DIVISION VI

Sec. 32. Section 730.5, subsection 7, paragraph a, as enacted in 1998 Iowa Acts, House File 299, section 1, is amended to read as follows:

a. The collection of samples shall be performed under sanitary conditions and with regard for the privacy of the individual from whom the specimen is being obtained and in a manner reasonably calculated to preclude contamination or substitution of the specimen. If the sample collected is urine, procedures shall be established to provide for individual privacy in the collection of the sample unless there is a reasonable suspicion that a particular individual subject to testing may alter or substitute the urine specimen to be provided, or has previously altered or substituted a urine specimen provided pursuant to a drug or alcohol test. For purposes of this paragraph, "individual privacy" means a location at the collection site where urination can occur in private, which has been secured by visual inspection to ensure that other persons are not present, which provides that undetected access to the location is not possible during urination, and which provides for the ability to effectively restrict access to the location during the time the specimen is provided. If an individual is providing a sample and collection of the sample is directly monitored or observed by another individual, the individual who is directly monitoring

or observing the collection shall be of the same gender as the individual from whom the sample is being collected.

Sec. 33. Section 730.5, subsection 9, paragraph a, as enacted in 1998 Iowa Acts, House File 299, section 1, is amended to read as follows:

a. (1) Drug or alcohol testing or retesting by an employer shall be carried out within the terms of a written policy which has been provided to every employee subject to testing, and is available for review by employees and prospective employees. If an employee or prospective employee is a minor, the employer shall provide a copy of the written policy to a parent of the employee or prospective employee and shall obtain a receipt or acknowledgement from the parent that a copy of the policy has been received. Providing a copy of the written policy to a parent of a minor by certified mail, return receipt requested, shall satisfy the requirements of this subparagraph.

(2) In addition, the written policy shall provide that any notice required by subsection 7, paragraph "i", to be provided to an individual pursuant to a drug or alcohol test conducted pursuant to this section, shall also be provided to the parent of the individual by certified mail, return receipt requested, if the individual tested is a minor.

(3) In providing information or notice to a parent as required by this paragraph, an employer shall rely on the information regarding the identity of a parent as provided by the minor.

(4) For purposes of this paragraph, "minor" means an individual who is under eighteen years of age and is not considered by law to be an adult, and "parent" means one biological or adoptive parent, a stepparent, or a legal guardian or custodian of the minor.

DIVISION VII

Sec. 34. IMPLEMENTATION OF ACT. Section 25B.2, subsection 3, shall not apply to this Act.

Sec. 35. EFFECTIVE DATES. Division VI of this Act takes effect upon enactment or April 16, 1998, whichever is later.

Sec. 36. RETROACTIVE APPLICABILITY. Sections 4 and 5 of this Act are retroactively applicable to July 1, 1997, and are applicable on and after that date.

Sec. 37. EFFECTIVE DATE. Division I of this Act, being deemed of immediate importance, takes effect upon enactment.

MARY E. KRAMER
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 2391, Seventy-seventh General Assembly.

MARY PAT GUNDERSON
Secretary of the Senate

Approved April 22, 1998

TERRY E. BRANSTAD
Governor