

FILED JAN 22 '03

SENATE FILE 37
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1001)

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

A BILL FOR

1 An Act providing for a .08 blood alcohol concentration limit for
2 motor vehicle operating while intoxicated offenses.

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

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SF 37

1 Section 1. Section 321J.2, subsection 1, paragraph b, Code
2 2003, is amended to read as follows:

3 b. While having an alcohol concentration of ~~not~~ .08 or
4 more.

5 Sec. 2. Section 321J.6, subsection 1, paragraph g, Code
6 2003, is amended to read as follows:

7 g. The preliminary breath screening test was administered
8 and it indicated an alcohol concentration of .02 or more but
9 less than ~~not~~ .08 and the person is under the age of twenty-
10 one.

11 Sec. 3. Sect 321J.12, subsection 5, Code 2003, is amended
12 to read as follows:

13 5. Upon certification, subject to penalty of perjury, by
14 the peace officer that there existed reasonable grounds to
15 believe that the person had been operating a motor vehicle in
16 violation of section 321J.2A, that there existed one or more
17 of the necessary conditions for chemical testing described in
18 section 321J.6, subsection 1, and that the person submitted to
19 chemical testing and the test results indicated an alcohol
20 concentration ~~as defined in section 321J.1~~ of .02 or more but
21 less than ~~not~~ .08, the department shall revoke the person's
22 driver's license or operating privilege for a period of sixty
23 days if the person has had no previous revocation under this
24 chapter, and for a period of ninety days if the person has had
25 a previous revocation under this chapter.

26 Sec. 4. IMPLEMENTATION OF ACT. Section 25B.2, subsection
27 3, shall not apply to this Act.

28 EXPLANATION

29 This bill lowers the limit for blood alcohol concentration
30 (BAC) while driving a motor vehicle from .10 BAC to .08 BAC.
31 Under the bill, a person who drives with .08 BAC or higher
32 would violate Code section 321J.2, the operating while
33 intoxicated statute.

34 The bill may include a state mandate as defined in Code
35 section 25B.3. The bill makes inapplicable Code section

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

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SENATE FILE 37

S-3006

1 Amend Senate File 37 as follows:

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

4 "Section 1. NEW SECTION. 123.49A BREATHALYZER
5 TESTS.

6 An establishment that holds a class "A", class "B",
7 or class "C" liquor control license shall provide a
8 breathalyzer test for public use at a charge not to
9 exceed five dollars per test. A licensee shall be
10 immune from liability in any civil or criminal action
11 arising out of the results of a test provided pursuant
12 to this section and such results shall not be
13 admissible in a court of law."

14 2. Title page, line 2, by inserting after the
15 word "offenses" the following: "and providing for
16 breathalyzer tests in certain drinking
17 establishments".

18 3. By renumbering as necessary.

By DAVID MILLER

S-3006 FILED JANUARY 28, 2003

S-3073

1 Amend Senate File 37 as follows:

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

4 "Sec. ____ . Section 321J.2, subsection 2, paragraph
5 a, subparagraph (1), Code 2003, is amended to read as
6 follows:

7 (1) Imprisonment in the county jail for ~~not less~~
8 ~~than forty-eight hours~~ up to one year, to be served as
9 ordered by the court, less credit for any time the
10 person was confined in a jail or detention facility
11 following arrest. However, the court, in ordering
12 service of the sentence and in its discretion, may
13 accommodate the defendant's work schedule. In lieu of
14 a sentence of imprisonment, the court may order the
15 defendant to perform unpaid community service.

16 Sec. ____ . Section 321J.2, subsection 2, paragraphs
17 b and c, Code 2003, are amended to read as follows:

18 b. An aggravated misdemeanor for a second offense,
19 and shall be imprisoned in the county jail or
20 community-based correctional facility not less than

21 seven five days or shall be sentenced to perform
22 unpaid community service for not less than thirty
23 days, and shall be assessed a fine of not less than
24 one thousand five hundred dollars nor more than five
25 thousand dollars.

26 c. A class "D" felony for a third offense and each
27 subsequent offense, and shall be committed to the
28 custody of the director of the department of
29 corrections for an indeterminate term not to exceed
30 five years, shall be confined for a mandatory minimum
31 term of ~~thirty ten days~~ or shall be sentenced to
32 perform unpaid community service for not less than
33 sixty days, and shall be assessed a fine of not less
34 than two thousand five hundred dollars nor more than
35 seven thousand five hundred dollars.

36 (1) If the court does not suspend a person's
37 sentence of commitment to the custody of the director
38 of the department of corrections under this paragraph
39 "c", the person shall be assigned to a facility
40 pursuant to section 904.513.

41 (2) If the court suspends a person's sentence of
42 commitment to the custody of the director of the
43 department of corrections under this paragraph "c",
44 the court shall order the person to serve not less
45 than ~~thirty ten days~~ nor more than one year in the
46 county jail, and the person may be committed to
47 treatment in the community under section 907.6."

48 2. By renumbering as necessary.

By DAVID MILLER
BOB BRUNKHORST

S-3046

1 Amend Senate File 37 as follows:

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

4 "Sec. ____ . Section 321J.2, subsection 2, paragraph
5 a, subparagraph (1), Code 2003, is amended to read as
6 follows:

7 (1) Imprisonment in the county jail ~~for not less~~
8 ~~than forty eight hours up to one year~~, to be served as
9 ordered by the court, less credit for any time the
10 person was confined in a jail or detention facility
11 following arrest. However, the court, in ordering
12 service of the sentence and in its discretion, may
13 accommodate the defendant's work schedule.

14 Sec. ____ . Section 321J.2, subsection 2, paragraphs
15 b and c, Code 2003, are amended to read as follows:

16 b. An aggravated misdemeanor for a second offense,
17 and ~~shall~~ may be imprisoned in the county jail or
18 community-based correctional facility ~~not less than~~
19 ~~seven days up to two years~~, and shall be assessed a
20 fine of not less than one thousand five hundred
21 dollars nor more than five thousand dollars.

22 c. A class "D" felony for a third offense and each
23 subsequent offense, and ~~shall~~ may be committed to the
24 custody of the director of the department of
25 corrections for an indeterminate term not to exceed
26 five years, ~~shall be confined for a mandatory minimum~~
27 ~~term of thirty days~~, and shall be assessed a fine of
28 not less than two thousand five hundred dollars nor
29 more than seven thousand five hundred dollars.

30 (1) If the court does not suspend a person's
31 sentence of commitment to the custody of the director
32 of the department of corrections under this paragraph
33 "c", the person shall be assigned to a facility
34 pursuant to section 904.513.

35 (2) If the court suspends a person's sentence of
36 commitment to the custody of the director of the
37 department of corrections under this paragraph "c",
38 ~~the court shall order the person to serve not less~~
39 ~~than thirty days nor more than one year in the county~~
40 ~~jail, and the person may be committed to treatment in~~
41 ~~the community under section 907.6.~~

42 Sec. ____ . Section 321J.2, Code 2003, is amended by
43 adding the following new subsection:

44 NEW SUBSECTION. 2A. In ordering service of the
45 defendant's sentence under subsection 2, paragraph
46 "a", "b", or "c", the court may order the defendant to
47 perform a specified amount of unpaid community
48 service, assign the defendant to a substance abuse
49 treatment facility, or order the defendant to attend
50 and participate in a reality education substance abuse

S-3046

1 prevention program or drinking drivers course, or any
2 combination of the foregoing, in lieu of the sentence
3 of confinement.

4 Sec. ___. Section 321J.2, subsection 3, paragraph
5 a, unnumbered paragraph 1, Code 2003, is amended to
6 read as follows:

7 Notwithstanding the provisions of sections 901.5
8 and 907.3, the court shall not ~~defer judgment or~~
9 ~~sentencing, or suspend execution of any mandatory~~
10 ~~minimum sentence of incarceration applicable to the~~
11 ~~defendant under subsection 2, and shall not suspend~~
12 execution of any other part of a sentence not
13 involving incarceration imposed pursuant to subsection
14 2, if any of the following apply:

15 Sec. ___. Section 321J.2, subsection 3, paragraph
16 d, Code 2003, is amended to read as follows:

17 d. A ~~minimum~~ term of imprisonment in a county jail
18 or community-based correctional facility imposed on a
19 person convicted of a second or subsequent offense
20 under subsection 2 shall be served on consecutive
21 days. However, if the sentencing court finds that
22 service of the full ~~minimum~~ term on consecutive days
23 would work an undue hardship on the person, or finds
24 that sufficient jail space is not available and is not
25 reasonably expected to become available within four
26 months after sentencing to incarcerate the person
27 serving the ~~minimum~~ sentence on consecutive days, the
28 court may order the person to serve the ~~minimum~~ term
29 in segments of at least forty-eight hours and to
30 perform a specified number of hours of unpaid
31 community service as deemed appropriate by the
32 sentencing court."

33 2. Page 1, by inserting after line 25, the
34 following:

35 "Sec. ___. Section 907.3, subsection 3, paragraph
36 c, Code 2003, is amended to read as follows:

37 c. ~~A mandatory minimum sentence of incarceration~~
38 ~~imposed pursuant to a violation of section 321J.2,~~
39 ~~subsection 1; furthermore, the court shall not suspend~~
40 ~~any~~ Any part of a sentence not involving incarceration
41 imposed pursuant to section 321J.2, subsection 2,
42 beyond the mandatory minimum if any of the following
43 apply:"

44 3. Title page, line 1, by striking the words and
45 figure "providing for a .08 blood alcohol
46 concentration limit for" and inserting the following:
47 "relating to".

48 4. By renumbering as necessary.

By DAVID MILLER
BOB BRUNKHORST

Redfern
Larson
Kreiman

SSB 1001

Succeeded By
SF/HF 37

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY CHAIRPERSON
REDFERN)

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

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