

substance abuse program or the department shall pay all expenses incurred by the auditor of state in conducting an audit under this section.

Approved April 30, 1982

CHAPTER 1167
MOTOR VEHICLE OPERATION WHILE UNDER THE
INFLUENCE OF ALCOHOL OR DRUGS
H.F. 2369

AN ACT relating to crimes resulting from the operation of motor vehicles under certain circumstances, including while the operator's drivers license is suspended and while under the influence of an alcoholic beverage or drug or with a certain amount of alcohol in the blood and the provisions for chemical testing, sentencing, penalties and license revocation relating to that offense.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 321.191, unnumbered paragraph 2, Code 1981, is amended to read as follows:

There shall be a fee of twenty dollars for reinstatement of a chauffeur's license or operator's license which is, after notice and opportunity for hearing, suspended or revoked pursuant to sections 321.209, and 321.210, except subsection 4 thereof, and ~~321B.7~~ chapter 321B. Such twenty-dollar fee shall be collected only if the person whose license was suspended or revoked was served personally with notice thereof. If the person whose license was suspended or revoked was served notice thereof by ~~restricted~~ certified mail, the reinstatement fee shall be ten dollars.

Sec. 2. Section 321.209, subsection 2, Code 1981, is amended by striking the subsection and inserting in lieu thereof the following:

2. Operating a motor vehicle in violation of section 321.281 by a person whose driver's license has not been revoked under chapter 321B for the occurrence from which the arrest arose.

Sec. 3. Section 321.212, unnumbered paragraph 1, Code 1981, is amended to read as follows:

Except as provided in section 321.513 the department shall not suspend a license for a period of more than one year, except that a license suspended because of incompetency to drive a motor vehicle shall be suspended until the department receives satisfactory evidence that the former holder is competent to operate a motor vehicle and a refusal to reinstate shall constitute a denial of license within the provisions of section 321.215; upon revoking a license the department shall not grant an application for a new license until the expiration of one year after the revocation, unless another period is specified by law.

Sec. 4. Section 321.218, unnumbered paragraph 1, Code 1981, is amended to read as follows:

Any A person whose operator's or chauffeur's license or driving privilege, has been denied, canceled, suspended or revoked as provided in this chapter, and who drives any motor vehicle upon the highways of this state while such the license or privilege is denied, canceled, suspended, or revoked, is guilty of a simple serious misdemeanor. The sentence imposed under this section shall not be suspended by the court, notwithstanding the provisions of section 907.3 or any other provision of statute. The department, upon receiving the record of the conviction of any a person under this section upon a charge of driving a motor vehicle while the license of such the person was suspended or revoked, shall, except for licenses suspended under section 321.513, extend the period of suspension or revocation for an additional like period, and the department shall not issue a new license during such the additional period.

Sec. 5. Section 321.281, Code 1981, as amended by Acts of the Sixty-ninth General Assembly, 1981 Session, chapter 103, section 6, is amended by striking the section and inserting in lieu thereof the following:

321.281 OPERATING WHILE INTOXICATED OR DRUGGED—COPY OF JUDGMENT TO DEPARTMENT—COMMITMENT OF DEFENDANT FOR EVALUATION AND TREATMENT.

1. A person shall not operate a motor vehicle upon the public highways of this state in either of the following conditions:

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

b. While having thirteen hundredths or more of one percent by weight of alcohol in the blood.

2. A person convicted of a violation of this section, upon conviction or a plea of guilty, is guilty of:

a. A serious misdemeanor for the first offense and shall be imprisoned in the county jail for not less than forty-eight hours, less credit for any time the person was confined in a jail or detention facility following arrest. The court may accommodate the sentence to the work schedule of the defendant.

b. An aggravated misdemeanor for a second offense and shall be imprisoned in the county jail or community-based correctional facility not less than seven days, which minimum term cannot be suspended notwithstanding section 901.5, subsection 3 and section 907.3, subsection 2.

c. A class "D" felony for a third offense and each subsequent offense.

No conviction for, or plea of guilty to, a violation of this section which occurred more than six years prior to the date of the violation charged shall be considered in determining that the violation charged is a second, third or subsequent offense.

3. A person shall not be convicted and sentenced for violations of both paragraphs a and b of subsection 1 if the offenses were committed in the same occurrence.

4. As a condition of a suspended sentence or portion of sentence for a second, third or subsequent offense in violation of this section, the court upon hearing may commit the defendant for inpatient treatment of alcoholism or drug addiction or dependency to any hospital, institution or community correctional facility in Iowa providing such treatment. The time for which the defendant is committed for treatment shall be credited against the defendant's sentence. The court may prescribe the length of time for the evaluation and treatment or it may request that the hospital to which the person is committed immediately report to the court when the person has received maximum benefit from the program of the hospital or institution or has recovered from the person's addiction, dependency, or tendency to chronically abuse alcohol or drugs. A person committed under this section who does not possess sufficient income or estate to make payment of the costs of the treatment in whole or in part shall be considered a state patient and the costs of treatment shall be paid as provided in section 125.44.

5. The clerk of court shall immediately certify to the department a true copy of the judgment sentencing the defendant under this section.

6. If the court defers judgment pursuant to section 907.3 for an offense under this section, the court shall order that the defendant's license to operate a motor vehicle be revoked for a period of not less than thirty days nor more than ninety days, during which time no new license to operate a motor vehicle shall be issued to the defendant. The court shall immediately require the defendant to surrender to it all operator's or chauffer's* licenses held by the defendant which the court shall forward to the department with a copy of the order deferring judgment. A person whose license to operate a motor vehicle is revoked pursuant to this subsection may be issued a temporary restricted driving permit by the department allowing the person to drive to and from the person's home and place of employment and in the person's employment and to attend evaluation, treatment or educational services for alcohol or drug dependency, if the person's license to operate a motor vehicle is not subject to revocation under section 321B.7 for refusal to submit to chemical testing.

7. This section does not apply to a person operating a motor vehicle while under the influence of a narcotic, hypnotic, or other drug if such substances were prescribed for the person and were taken under the prescription and in accordance with the directions of a medical practitioner as defined in section 155.3, subsection 11, if there is no evidence of the consumption of alcohol and the medical practitioner had not directed the person to refrain from operating a motor vehicle.

8. In any prosecution under this section, evidence of the results of analysis of a specimen of the defendant's blood, breath, saliva, or urine is admissible upon proof of a proper foundation. In an action in which a violation of subsection 1, paragraph a of this section is alleged, evidence that there was, at the time, ten hundredths or more of one percent by weight of alcohol in the defendant's blood is presumptive evidence that the defendant was under the influence of an alcoholic beverage.

9. a. Upon a plea or verdict of guilty of a third or subsequent violation of this section, the court in which the plea was entered or the verdict was returned shall order that the defendant's license or permit to operate motor vehicles be revoked by the department and that the defendant shall remain ineligible for a new license or permit for a period of six years. Any license or permit to operate motor vehicles held by the defendant shall be surrendered to the court who shall forward it to the department with a copy of the order for revocation.

b. After two years from the date of the order for revocation, the defendant may apply to the court for restoration of the defendant's eligibility for a license or permit to operate motor vehicles. The application may be granted only if all of the following are shown by the defendant by a preponderance of the evidence:

(1) The defendant has completed an evaluation and, if recommended by the evaluation, a program of treatment for chemical dependency and is recovering, or has substantially recovered, from that dependency on or tendency to abuse alcohol or drugs.

(2) The defendant has not been convicted, since the date of the revocation order, of any subsequent violations of this section or section 123.46, or any comparable city or county ordinance, and the defendant has not, since the date of the revocation order, submitted to a chemical test under chapter 321B that indicated ten hundredths or more of one percent by weight of alcohol in the person's blood or refused to submit to chemical testing under that chapter.

(3) The defendant has abstained from the excessive consumption of alcoholic beverages and the consumption of controlled substances, except at the direction of a licensed physician or pursuant to a valid prescription.

*According to enrolled Act

(4) The defendant's license or permit is not currently subject to suspension or revocation for any other reason.

c. The court shall forward to the department a record of any application submitted under paragraph b and the results of the court's disposition of the application.

Sec. 6. Section 321.282, Code 1981, is amended to read as follows:

321.282 VIOLATIONS. If any A person who whose license or privilege to operate is revoked or denied because the person has been convicted or has pleaded guilty to driving or operating a motor vehicle upon the public highways of this state while in an intoxicated condition a violation of section 321.281 or is revoked under subsection 6 of that section who is found driving or operating any motor vehicle in violation of the provisions of sections 321.174 and 321.209 the person shall be upon a highway in this state while the license or privilege is revoked or denied is guilty of a simple serious misdemeanor.

Sec. 7. Section 321.283, subsections 2, 3, and 4, Code 1981, are amended to read as follows:

2. **COURT ORDER.** After the a conviction of a person for, or a plea of guilty of, operating a motor vehicle while under the influence of an alcoholic beverage a violation of section 321.281, the court in addition to its power to commit the defendant for treatment of alcoholism under section 321.281, may in lieu of, or prior to or after the imposition of punishment for a first offense or prior to or after the imposition of punishment for any subsequent offense, order the defendant, at his the defendant's own expense, to enroll in, attend and successfully complete a course for drinking drivers. The court may alternatively or additionally require the defendant to seek evaluation, treatment or rehabilitation services under section 125.33 at the defendant's expense and to furnish evidence of successful completion. A copy of the order shall be forwarded to the department.

3. **REFERRED ON CONVICTION.** After any a conviction for operating a motor vehicle while under the influence of an alcoholic beverage under a violation of section 321.281, the court may refer the defendant for treatment at a facility as defined in sections 125.1 to 125.43 and designated by the Iowa department of substance abuse. The court may prescribe the length of time for treatment or it may be left to the discretion of the facility to which the defendant was referred. A person referred under this section who is does not possessed of possess sufficient income or estate to enable him or her the person to make payment of the costs of such treatment in whole or in part is a state patient, and costs for treatment shall be paid as provided in section 125.44.

4. **LICENSE REVOKED.** When the court orders a person to enroll, attend and successfully complete a course for drinking drivers or complete evaluation, treatment or rehabilitation services and the person's drivers license is not revoked or suspended at the time of the order, the court shall also order that the revocation of the person's drivers license shall be for an indefinite period and until the required course or treatment or rehabilitation services is successfully completed and proof of completion has been filed with the department and the provisions of chapter 321A have been complied with. If the person's drivers license is revoked or suspended at the time of the order, that revocation or suspension shall not end prior to the completion and proof of completion of the required course or evaluation, treatment or rehabilitation services.

Sec. 8. Section 321.283, subsection 6, Code 1981, is amended to read as follows:

6. **TEMPORARY PERMIT.** Any person required to attend a course evaluation, treatment or rehabilitation services by the provisions of this division, who is subject to a drivers license suspension or revocation, may be issued a temporary driving permit by the department restricted to driving to and from his the person's home, place of employment, in his the person's employment and the location of the required course evaluation, treatment or rehabilitation services. Any person who does not receive a temporary driving permit may

after the period of license suspension or revocation under for a violation of section 321.281 have his or her drivers license reissued subject to suspension for failure to comply with the provisions of this division. This section shall not permit the issuance of a temporary driving permit or reissuance of a drivers license where the provisions of chapter 321A have not been complied with.

Successful completion of a course or evaluation, treatment or rehabilitation services required by this division shall not reverse a drivers license suspension or revocation or reduce the length of a suspension or revocation under for a violation of section 321.281; however, the director may reduce the length of a suspension or revocation contingent upon successful completion of a course for drinking drivers or under chapter 321B.

Sec. 9. Section 321.283, subsection 7, unnumbered paragraph 2, Code 1981, is amended to read as follows:

Enrollment in the courses shall not be limited to persons ordered to enroll, attend and successfully complete the course under the provisions of subsection 2, and any person convicted of operating a motor vehicle while under the influence of an alcoholic beverage a violation of section 321.281 who was not ordered to enroll, shall be allowed to in a course may enroll in and attend a course for drinking drivers.

Sec. 10. Section 321.555, subsection 1, paragraph b, Code 1981, is amended to read as follows:

b. Driving Operating a motor vehicle while under the influence of an alcoholic beverage or a controlled substance as defined in section 204.101 in violation of section 321.281.

Sec. 11. Section 321A.17, subsection 1, Code 1981, is amended to read as follows:

1. Whenever the director, under any law of this state, suspends or revokes the license of any person upon receiving record of a conviction or a forfeiture of bail or revokes the license of any person pursuant to chapter 321B, the director shall also suspend the registration for all motor vehicles registered in the name of such the person, except that he the director shall not suspend such the registration, unless otherwise required by law, if such the person has previously given or shall immediately give gives and thereafter maintain maintains proof of financial responsibility with respect to all motor vehicles registered by such the person.

Sec. 12. Chapter 321B, Code 1981, is amended by adding the following new section:

NEW SECTION. PRELIMINARY SCREENING TEST. When a peace officer has reasonable grounds to believe that a motor vehicle operator may be violating or has violated section 321.281, or the operator has been involved in a motor vehicle collision resulting in injury or death, the peace officer may request the operator to provide a sample of the operator's breath for a preliminary screening test using a device approved by the commissioner of public safety for that purpose. The results of this preliminary screening test may be used for the purpose of deciding whether an arrest should be made and whether to request a chemical test authorized in this chapter, but shall not be used in any court action except to prove that a chemical test was properly requested of a person pursuant to this chapter.

Sec. 13. Chapter 321B, Code 1981, is amended by adding the following new section:

NEW SECTION. TEST RESULT REVOCATION. Upon certification by the peace officer that there existed reasonable grounds to believe the person to have been operating a motor vehicle in violation of section 321.281 and that the person submitted to chemical testing and the test results indicate ten hundredths or more of one percent by weight of alcohol in the person's blood, the department shall revoke the person's license or permit to drive or nonresident operating privilege for a period of one hundred twenty days if the person has no revocation within the previous six years under section 321.209, subsection 2, section 321.281 or chapter 321B, two hundred forty days if the person has one previous revocation under those provisions, and one year if the person has two or more revocations under those provisions arising from separate occurrences.

The effective date of the revocation shall be twenty days after the department has mailed notice of revocation to the person by certified mail or, on behalf of the department, a peace officer offering a chemical test or directing the administration of a chemical test may serve immediate notice of intention to revoke and of revocation on a person when the person's test results indicate ten hundredths or more of one percent by weight of alcohol in the blood.

If the peace officer serves that immediate notice, the peace officer shall take the Iowa license or permit of the driver, if any, and issue a temporary license valid only for twenty days. The peace officer shall immediately send the person's driver's license to the department along with an affidavit stating that the test results indicate ten hundredths of one percent or more by weight of alcohol in the person's blood.

The department may, on application, issue a temporary restricted license to a person whose license has been revoked under this section when the person's regular employment includes the operation of a motor vehicle or who cannot perform his or her regular occupation without the use of a motor vehicle, or when the person's use of a motor vehicle is necessary to attend evaluation, treatment or educational services for alcohol or drug dependency, but the person shall not operate a vehicle for pleasure while holding a restricted license. However, this paragraph does not apply to a person whose license is suspended or revoked for another reason.

Sec. 14. Section 321B.1, Code 1981, is amended to read as follows:

321B.1 DECLARATION OF POLICY. The general assembly hereby determines and declares that the provisions of this chapter are is necessary in order to control alcoholic beverages and to aid the enforcement of laws prohibiting operation of a motor vehicle while under the influence of an alcoholic beverage, a narcotic, hypnotic, or other drug or any combination of such substances, or while having a certain amount of alcohol in the blood.

Sec. 15. Section 321B.3, Code 1981, is amended to read as follows:

321B.3 IMPLIED CONSENT TO TEST. Any person who operates a motor vehicle in this state upon a public highway, under such circumstances as to which give reasonable grounds to believe the person to have been operating a motor vehicle while under the influence of an alcoholic beverage in violation of section 321.281, shall be is deemed to have given consent to the withdrawal from his body of specimens of his the person's blood, breath, saliva, or urine, and to a chemical test or tests thereof, of the specimens for the purpose of determining the alcoholic content of his the blood, subject to the provisions hereinafter set out this section. The withdrawal of such the body substances, and the test or tests thereof, shall be administered at the written request of a peace officer having reasonable grounds to believe the person to have been operating a motor vehicle upon a public highway of this state while under the influence of an alcoholic beverage in violation of section 321.281, and only after the peace officer has placed such person under arrest for the offense of operating a motor vehicle while under the influence of an alcoholic beverage if any of the following conditions exist:

1. A peace officer has lawfully placed the person under arrest for violation of section 321.281.

2. The person has been involved in a motor vehicle accident or collision resulting in personal injury or death.

3. The person has refused to take a preliminary breath screening test provided by this chapter.

4. The preliminary breath screening test was administered and it recorded ten hundredths or more of one percent by weight of alcohol in the blood.

PARAGRAPH DIVIDED. The peace officer shall determine which of the four substances, breath, blood, saliva, or urine, shall be tested. Refusal to submit to a chemical test of urine, saliva or breath shall be is deemed a refusal to submit, and the provisions of section 321B.7

~~shall apply applies.~~ A refusal to submit to a chemical test of blood ~~shall is~~ not be deemed a refusal to submit, but in that case, the peace officer shall then determine which one of the other three substances shall be tested, and shall offer ~~sueh the~~ test. If ~~sueh the~~ peace officer fails to provide a test within two hours after ~~sueh the preliminary screening test is administered or refused or the arrest is made, whichever occurs first, no a test shall be is not~~ required, and there shall be no revocation under the provisions of section 321B.7.

Sec. 16. Chapter 321B, Code 1981, is amended by adding the following new section:

NEW SECTION. TESTS PURSUANT TO WARRANTS.

1. Refusal to consent to a test under section 321B.3 does not prohibit the withdrawal of a specimen for chemical testing pursuant to a search warrant issued in the investigation of a suspected violation of section 707.5 where the following grounds exist:

- a. A traffic accident has resulted in a death or personal injury reasonably likely to cause death, and
- b. There are reasonable grounds to believe that one or more of the persons whose driving may have been the proximate cause of the accident was violating section 321.281 at the time of the accident.

2. Search warrants may be issued under this section in full compliance with chapter 808 or they may be issued under subsection 3 of this section.

3. Notwithstanding section 808.3, the issuance of a search warrant under this section may be based upon sworn oral testimony communicated by telephone if the magistrate who is asked to issue the warrant is satisfied that the circumstances make it reasonable to dispense with a written affidavit. The following shall then apply:

- a. When a caller applies for the issuance of a warrant under this section and the magistrate becomes aware of the purpose of the call, the magistrate shall place under oath the person applying for the warrant.

- b. The person applying for the warrant shall prepare a duplicate warrant and read the duplicate warrant, verbatim, to the magistrate who shall enter, verbatim, what is read to the magistrate on a form that will be considered the original warrant. The magistrate may direct that the warrant be modified.

- c. The oral application testimony shall set forth facts and information tending to establish the existence of the grounds for the warrant and shall describe with a reasonable degree of specificity the person or persons whose driving is believed to have been the proximate cause of the accident and from whom a specimen is to be withdrawn and the location where the withdrawal of the specimen or specimens is to take place.

- d. If a voice recording device is available, the magistrate may record by means of that device all of the call after the magistrate becomes aware of the purpose of the call. Otherwise, the magistrate shall cause a stenographic or longhand memorandum to be made of the oral testimony of the person applying for the warrant.

- e. If the magistrate is satisfied from the oral testimony that the grounds for the warrant exist or that there is probable cause to believe that they exist, the magistrate shall order the issuance of the warrant by directing the person applying for the warrant to sign the magistrate's name on the duplicate warrant. The magistrate shall immediately sign the original warrant and enter on its face the exact time when the issuance was ordered.

- f. The person who executes the warrant shall enter the time of execution on the face of the duplicate warrant.

- g. The magistrate shall cause any record of the call made by means of a voice recording device to be transcribed, shall certify the accuracy of the transcript, and shall file the transcript and the original record with the clerk. If a stenographic or longhand memorandum was made of the oral testimony of the person who applied for the warrant, the magistrate shall file a signed copy with the clerk.

h. The clerk of court shall maintain the original and duplicate warrants along with the record of the telephone call and any transcript or memorandum made of the call in a confidential file until a charge, if any, is filed.

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

5. The act of any person knowingly resisting or obstructing the withdrawal of a specimen pursuant to a search warrant issued under this section constitutes a contempt punishable by a fine not exceeding one thousand dollars or imprisonment in a county jail not exceeding one year or by both such fine and imprisonment. Also, if the withdrawal of a specimen is so resisted or obstructed, sections 321B.7 and 321B.11 apply.

6. Nonsubstantive variances between the contents of the original and duplicate warrants shall not cause a warrant issued under subsection 3 of this section to be considered invalid.

7. Specimens obtained pursuant to warrants issued under this section are not subject to disposition under section 808.9 or chapter 809.

8. Subsections 1 through 7 of this section do not apply where a test may be administered under section 321B.5.

9. Medical personnel who use reasonable care and accepted medical practices in withdrawing blood specimens are immune from liability for their actions in complying with requests made of them pursuant to search warrants or pursuant to section 321B.4.

Sec. 17. Section 321B.4, Code 1981, is amended to read as follows:

321B.4 TAKING SAMPLE FOR TEST. Only a licensed physician, ~~or a physician's assistant as defined in section 148C.1, subsection 6,~~ medical technologist or registered nurse designated by a licensed physician as his representative, acting at the written request of a peace officer may withdraw such body substances for the purpose of determining the alcoholic or drug content of the person's blood. 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 alcoholic or drug content of the person's blood. Only new, originally factory wrapped, disposable syringes and needles, kept under strictly sanitary and sterile conditions shall be used for drawing blood. ~~Such~~ The person may have an independent chemical test or tests administered in addition to any administered at the direction of a peace officer. The failure or inability of the person to obtain an independent chemical test or tests ~~shall~~ does not preclude the admission in evidence of the results of the test or tests taken at the direction of the peace officer. Upon the request of the person who is tested, the results of the test or tests taken at the direction of the peace officer shall be made available to ~~him~~ the person.

Sec. 18. Section 321B.5, Code 1981, is amended to read as follows:

321B.5 DEAD OR UNCONSCIOUS PERSONS. Any person who is dead, unconscious or who is otherwise in a condition rendering ~~him~~ the person incapable of consent or refusal ~~shall be is~~ deemed not to have withdrawn the consent provided by section 321B.3, and the test may be given; provided that a licensed physician shall certify in advance of such test that such person is dead, unconscious or otherwise in a condition rendering ~~him~~ that person incapable of consent or refusal. ~~In such case such condition shall obviate the requirements of arrest and advice pursuant to section 321B.6.~~

Sec. 19. Section 321B.6, Code 1981, is amended to read as follows:

321B.6 STATEMENT OF OFFICER. A peace officer shall advise any person who is requested to take any chemical test that a refusal to submit to such test will result in revocation of the person's license or privilege to operate a motor vehicle; ~~provided, however, that this requirement shall.~~ A peace officer shall advise a person prior to the submission to a chemical test that if the results indicate ten hundredths or more of one percent by weight of alcohol in the blood the department will revoke the person's license or privilege to operate a motor vehicle. The peace officer shall advise the person of the periods of revocation applying for both reasons for revocation. The requirements of this section do not apply in the case of any person referred to in section 321B.5.

Sec. 20. Section 321B.7, Code 1981, is amended to read as follows:

321B.7 REFUSAL TO SUBMIT. If a person ~~under arrest~~ refuses to submit to the chemical testing, ~~no a test shall not be given, but the director department,~~ upon the receipt of a sworn report of the peace officer that he or she ~~the officer~~ had reasonable grounds to believe the ~~arrested person to have been operating a motor vehicle upon a public highway of this state while under the influence of an alcoholic beverage, that he or she had placed such person under arrest for the offense of operating a motor vehicle while under the influence of an alcoholic beverage in violation of section 321.281, that specified conditions existed for chemical testing pursuant to section 321B.3, and that the person had refused to submit to the chemical testing,~~ shall revoke ~~his or her the person's~~ license or permit to drive and any nonresident operating privilege for a period of ~~not less than one hundred twenty eighty days nor more than one year if the person has no previous revocation under section 321.209, subsection 2, section 321.281, or chapter 321B; one year if the person has one previous revocation under those provisions; and five hundred forty days if the person has two or more previous revocations under those provisions; or if the person is a resident without a license or permit to operate a motor vehicle in this state, the director department shall deny to the person the issuance of a license or permit for the same period a license or permit would be revoked within one year from the date of the alleged violation, subject to review as hereinafter provided in this chapter. The effective date of any such revocation shall be twenty days after the director department has mailed notice of such revocation to such the person by registered or certified mail or, on behalf of the department, a peace officer offering or directing the administration of a chemical test may serve immediate notice of intention to revoke and of revocation on a person who refuses to permit chemical testing. If the peace officer serves that immediate notice, the peace officer shall take the Iowa license or permit of the driver, if any, and issue a temporary license effective for only twenty days. The peace officer shall immediately send the person's license to the department along with an affidavit indicating the person's refusal to submit to chemical testing.~~

Sec. 21. Section 321B.8, Code 1981, is amended to read as follows:

321B.8 HEARING. Upon the written request of a person whose privilege to drive has been revoked or denied, or has been issued a twenty-day license pursuant to section 13 of this Act or section 321B.7, the ~~director~~ department shall grant the person an opportunity to be heard within twenty days after the receipt of the request, but the request must be made within ~~thirty ten~~ days of the effective date of revocation or denial of driving privileges or the issuance of a temporary permit. The hearing shall be before the ~~director, department~~ in the county ~~wherein~~ where the alleged events occurred for which the person was arrested, unless the director and the person agree that the hearing may be held in some other county. The hearing may be recorded and its scope shall cover the issues of whether a peace officer had reasonable grounds to believe the person to have been operating a motor vehicle ~~upon a public highway of this state while under the influence of an alcoholic beverage, whether the person was placed under arrest and in violation of section 321.281, whether he the person~~ refused to

submit to the test or tests, the test results if a person consented to a test and whether the person should be issued a temporary restricted license. The director department shall order that the revocation or denial be either rescinded or sustained.

Sec. 22. Section 321B.9, Code 1981, is amended to read as follows:

321B.9 JUDICIAL REVIEW. Judicial review of the actions an action of the director department may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of said Act, petitions a petition for judicial review may be filed in the district court in the county wherein the alleged events occurred for which the licensee was arrested or in the county in which the administrative hearing was held.

Sec. 23. Section 321B.10, Code 1981, is amended to read as follows:

321B.10 EVIDENCE IN ANY ACTION. Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while operating a motor vehicle upon a public highway of this state while under the influence of an alcoholic beverage in violation of section 321.281, evidence of the amount of alcohol or drugs in the person's blood at the time of the act alleged as shown by a chemical analysis of his the person's blood, breath, saliva or urine is admissible.

Sec. 24. Section 321B.11, Code 1981, is amended to read as follows:

321B.11 PROOF OF REFUSAL ADMISSIBLE. If the person under arrest refuses to submit to the test or tests, proof of refusal shall be is admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was operating a motor vehicle upon a public highway of this state while under the influence of an alcoholic beverage in violation of section 321.281.

Sec. 25. Section 321B.15, Code 1981, is amended to read as follows:

321B.15 DRIVING WHILE LICENSE DENIED OR REVOKED. Any person whose license, or driving privilege, has been denied or revoked as provided in this chapter, and who drives any motor vehicle upon the highways of this state while such the license or privilege is denied or revoked, is guilty of a simple serious misdemeanor and upon conviction shall be punished as provided for simple misdemeanors in section 321.482. The department, upon receiving the record of the conviction of any person under this section upon a charge of driving a motor vehicle while the license of such the person was revoked or denied, shall extend the period of revocation or denial for an additional like period, and the department shall not issue a new license during such the additional period.

Sec. 26. Section 602.60, unnumbered paragraph 1, Code 1981, is amended to read as follows:

Judicial magistrates shall have jurisdiction of simple misdemeanors, including traffic and ordinance violations, preliminary hearings, search warrant proceedings, and small claims. They shall also have jurisdiction to exercise the powers specified in sections 644.2 and 644.12 and the power to hear complaints, or preliminary informations, issue warrants, order arrests, make commitments and take bail. They also have jurisdiction of first offense violations of section 321.281 but only to the extent that they may approve trial informations, conduct arraignments, accept guilty pleas if the defendant is represented by legal counsel, sentence those pleading guilty and make appropriate orders authorized by section 321.283. They shall have power to may act any place within the judicial district as directed, and venue shall be the same as in other district court proceedings.

Sec. 27. Section 602.62, Code 1981, is amended to read as follows:

602.62 PROCEDURE. The criminal procedure before judicial magistrates shall be as provided in chapters 804, 806, 808, 811, 820 and 821 and in R.Cr.P. 2, 5, 7, 8 and 32 to 46. The civil procedure before judicial magistrates shall be as provided in chapters 631 and 648.

Sec. 28. Section 907.3, subsection 1, unnumbered paragraph 2, Code 1981, is amended by adding the following new lettered subparagraph:

NEW LETTERED SUBPARAGRAPH. The offense is a violation of section 321.281 and, within the previous six years, the person has been convicted of a violation of that section or the person's driver's license has been revoked pursuant to that section or chapter 321B.

Approved May 11, 1982

CHAPTER 1168

DONATIONS OF PERISHABLE FOODS

H.F. 2340

AN ACT to limit the criminal or civil liability of donors of perishable food to charitable or nonprofit organizations and the liability of the organizations.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Chapter 122, Code 1981, is amended by adding the following new section:

NEW SECTION. DONATIONS OF PERISHABLE FOOD—DONOR NOT LIABLE—PENALTY.

1. As used in this section unless the context otherwise requires:

a. "Perishable food" means food which may spoil or otherwise become unfit for human consumption because of its nature or type of physical condition. This term includes, but is not limited to, fresh and processed meats, poultry, seafood, dairy products, eggs in the shell, fresh fruits and vegetables, and foods which have been packaged, refrigerated, or frozen.

b. "Canned foods" means canned foods that have been hermetically sealed or commercially processed and prepared for human consumption.

c. "Charitable or nonprofit organization" means an organization which is exempt from federal or state income taxation, except that the term does not include organizations which sell or offer to sell donated items of food. The assessment of a nominal fee or request for a donation in connection with the distribution of food by the charitable or nonprofit organization is not a sale.

d. "Gleaner" means a person who harvests, for free distribution, an agriculture crop that has been donated by the owner.

2. A gleaner or person who, in good faith, donates food to a charitable or nonprofit organization for ultimate free distribution to needy individuals is not subject to criminal or civil liability arising from the condition of the food if the donor reasonably inspects the food at the time of the donation and finds the food fit for human consumption. The immunity provided by this subsection does not extend to a donor or gleaner if damages result from the negligence, recklessness, or intentional misconduct of the donor, or if the donor or gleaner has, or should have had, actual or constructive knowledge that the food is tainted, contaminated, or harmful to the health or well-being of the ultimate recipient.