

Sec. 21. This Act, being deemed of immediate importance, takes effect from and after its publication in the Quad City Times, a newspaper published in Davenport, Iowa, and in the Sigourney News-Review, a newspaper published in Sigourney, Iowa. Section 1 of this Act takes effect upon publication. Section 5 of this Act takes effect January 1, 1985. All other sections of this Act take effect on July 1, 1984.

Approved May 8, 1984

I hereby certify that the foregoing Act, House File 2468 was published in the Quad City Times, Davenport, Iowa on May 17, 1984 and in the Sigourney News-Review, Sigourney, Iowa on May 16, 1984.

MARY JANE ODELL, *Secretary of State*

CHAPTER 1292
OPERATING A MOTOR VEHICLE WHILE INTOXICATED
H.F. 2486

AN ACT relating to the offense of operating a motor vehicle while intoxicated by providing civil penalties to be assessed against licensees or permittees, by requiring the dismissal of vendors for selling alcohol to a minor, by providing a definition of alcohol concentration, by providing a special license for persons age nineteen and under, by providing a fine or community service in addition to imprisonment for a first offense and requiring a substance abuse evaluation for a second or subsequent offense of operating a motor vehicle while intoxicated, by providing additional periods of revocation for drivers convicted of operating a motor vehicle while intoxicated who caused an accident in which there was a serious injury or death, by providing for restitution by offending drivers for any damage caused, by providing a special revocation period for persons age nineteen or under, by providing a civil penalty to be assessed against persons convicted of operating a motor vehicle while intoxicated to be used to finance the victim reparation fund, by providing access to the record of previous deferred judgments by county attorneys, and by establishing a study committee to conduct a study on present laws and penalties relating to the offense of operating a motor vehicle while intoxicated and make any recommendations for changes in the law in a report to the general assembly.

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

Section 1. Section 123.50, Code 1983, is amended by adding the following new subsections:
***NEW SUBSECTION. 4.** The department shall adopt rules to establish civil penalties in the amount of one hundred dollars for a first offense, two hundred fifty dollars for a second

*Item veto; see message at end of this Act

offense, and five hundred dollars for a third offense which the department shall, subject to the discretion of the director, assess against licensees or permittees for violations of section 123.49 as an alternative to other penalties fixed for such violations by this section. Money collected from penalties assessed under this subsection shall be deposited with the Iowa department of substance abuse for use in substance abuse treatment programs.*

NEW SUBSECTION. 5. Upon the conviction of a person acting as a vendor, as defined in section 123.24, subsection 1, for a violation of section 123.47 while in the course of the person's employment at the state liquor store, the director shall dismiss the person from the position as vendor if the person has failed to follow procedures developed by the director to prevent sales to minors.

Sec. 2. Section 321.1, Code Supplement 1983, is amended by adding the following new subsections:

NEW SUBSECTION. "Alcohol concentration" means the number of grams of alcohol per any of the following:

- a. One hundred milliliters of blood.
- b. Two hundred ten liters of breath.
- c. Sixty-seven milliliters of urine.

NEW SUBSECTION. "Alcoholic beverage" includes alcohol, wine, spirits, beer, or any other beverage which contains ethyl alcohol and is fit for human consumption.

Sec. 3. Section 321.189, subsection 1, Code 1983, is amended by inserting after unnumbered paragraph 1 the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. A motor vehicle license or a nonoperator's identification card issued to a person under nineteen years of age shall be identical in form to any other motor vehicle license or nonoperator's identification card issued to any other person, except that the photograph appearing on the face of the license or card shall be a side profile of the applicant. Upon attaining the age of nineteen, and upon the payment of a one dollar fee, the person shall be entitled to a new motor vehicle license or nonoperator's identification card for the unexpired months of the motor vehicle license or the nonoperator's identification card. This paragraph is effective for licenses or cards issued after the effective date of this Act.

Sec. 4. Section 321.281, subsections 1 and 2, Code 1983, is amended to read as follows:

1. A person shall not operate a motor vehicle upon the public highways of in 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 a combination of such substances.

b. While having an alcohol concentration of 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 to be served as ordered by the court, less credit for any time the person was confined in a jail or detention facility following arrest and assessed a fine of not less than five hundred dollars nor more than one thousand dollars. As an alternative to the fine, the court may order the person to perform not less than fifty nor more than two hundred hours of unpaid community service. The court may accommodate the sentence to the work schedule of the defendant.

*Item veto; see message at end of this Act

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 and assessed a fine of not less than seven hundred fifty dollars.

c. A class "D" felony for a third offense and each subsequent offense and assessed a fine of not less than seven hundred fifty dollars.

No conviction for, deferred judgment 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. For the purpose of determining if a violation charged is a second, third, or subsequent offense, a deferred judgment pursuant to section 907.3 for an offense under this section shall be counted as a previous violation.

On a conviction for a second or subsequent offense in violation of this section, the court shall order the defendant to undergo a substance abuse evaluation and the court may order the defendant to follow the recommendations proposed in the substance abuse evaluation for appropriate substance abuse treatment for the defendant. Court ordered substance abuse treatment is subject to the periodic reporting requirements of section 125.86. If a defendant is committed by the court to a substance abuse treatment facility, the administrator of the facility shall report to the court when it is determined that the defendant has received the maximum benefit of treatment at the facility and the defendant shall be released from the facility. 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 treatment program to which the person is committed immediately report to the court when the person has received maximum benefit from the treatment program 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. A defendant who fails to carry out the order of the court or who fails to successfully complete or attend an ordered substance abuse treatment program shall be confined in the county jail for twenty days in addition to any other imprisonment ordered by the court or may be ordered to perform unpaid community service work, and shall be placed on probation for one year with a violation of this probation punishable as contempt of court.

Sec. 5. Section 321.281, subsections 7 and 8, Code 1983, are amended to read as follows:

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 the substance was prescribed for the person and were was 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 by the means described in subsection 1, paragraph "a" of this section is alleged, evidence that there was, at the time, the defendant had an alcohol concentration of 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.

Sec. 6. Section 321.281, subsection 9, Code 1983, is amended by adding the following new paragraphs:

NEW PARAGRAPH. d. Upon a plea or verdict of guilty of a violation of this section during the occurrence of which there was an accident causing a serious injury in which the defendant was judged to be at fault, 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 one year in addition to any other period of suspension. 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. A person whose license to operate a motor vehicle has been 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 course of the person's employment upon the completion by the defendant of a substance abuse evaluation under section 125.33 and completion of a program of treatment if recommended.

NEW PARAGRAPH. e. Upon a plea or verdict of guilty of a violation of this section during the occurrence of which there was an accident which caused a loss of life for which the defendant was judged to be at fault, 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 for a period of six years shall not be eligible for a new license or permit. 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.

Sec. 7. Section 321.281, Code 1983, is amended by adding the following new subsections:

NEW SUBSECTION. 10. The court shall order a defendant convicted of a violation of this section to make restitution for damages resulting directly from the violation.

NEW SUBSECTION. If a defendant is convicted of a first offense of this section and the defendant's license or permit to operate a motor vehicle is revoked under section 321.209 or chapter 321B for the occurrence from which the arrest arose, the period of revocation shall be the period provided for such a revocation or until the defendant reaches the age of nineteen whichever period is longer. 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 course of the person's employment and to attend evaluation, treatment or educational services for alcohol or drug dependency.

NEW SUBSECTION. A person whose motor vehicle license was revoked under this section or under chapter 321B who has been ordered by the court to perform community service work as a result of a violation of this section may be issued a temporary restricted driving permit by the department to allow the person to drive to and from the person's home and the location at which the community service work will be performed.

Sec. 8. Section 321B.1, Code 1983, is amended to read as follows:

321B.1 DECLARATION OF POLICY. The general assembly declares that this chapter is necessary 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 a combination of such substances, or while having an alcohol concentration of a certain amount of alcohol in the blood or more.

Sec. 9. Section 321B.2, unnumbered paragraph 2, Code 1983, is amended to read as follows:

As used in this chapter and sections 29B.106, ~~321.209~~, and 321.281, ~~321.494~~ and 690.2 the words "alcoholic beverage" include and alcohol, wine, spirits, beer, or any other beverage which contains ethyl alcohol and is fit for human consumption concentration means as defined in section 321.1.

Sec. 10. Section 321B.4, subsection 1, unnumbered paragraph 1, Code 1983, is amended to read as follows:

Any person who operates a motor vehicle in this state ~~upon a public highway~~ under circumstances which give reasonable grounds to believe that the person ~~to have~~ has been operating a motor vehicle in violation of section 321.281, is deemed to have given consent to the withdrawal of specimens of the person's blood, breath, ~~saliva~~, or urine, and to a chemical test or tests of the specimens for the purpose of determining the ~~alcoholic content of the blood~~ alcohol concentration or presence of 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 ~~to have been~~ was operating a motor vehicle in violation of section 321.281, and if any of the following conditions exist:

Sec. 11. Section 321B.4, subsection 1, paragraph d, Code 1983, is amended to read as follows:

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

Sec. 12. Section 321B.12, Code 1983, is amended by striking the section and inserting in lieu thereof the following:

321B.12 STATEMENT OF OFFICER. A person who has been requested to submit to a chemical test shall be advised by a peace officer of the following:

1. If the person refuses to submit to the test, the person's license or operating privilege will be revoked by the department for the applicable period under section 321B.13.

2. If the person submits to the test and the results indicate an alcohol concentration of ten hundredths or more, the person's license or operating privilege will be revoked by the department for the applicable period under section 321B.16.

This section does not apply in any case involving a person described in section 321B.11.

Sec. 13. Section 321B.13, Code 1983, is amended to read as follows:

321B.13 REFUSAL TO SUBMIT. If a person refuses to submit to the chemical testing, a test shall not be given, but the department, upon the receipt of a sworn report of the peace officer that the officer had reasonable grounds to believe the person to have been operating a motor vehicle in violation of section 321.281, that specified conditions existed for chemical testing pursuant to section 321B.4, and that the person had refused to submit to the chemical testing, shall revoke the person's license or permit to drive and any nonresident operating privilege for a period of ~~one~~ two hundred eighty forty days if the person has no previous revocation under section 321.209, subsection 2, section 321.281, or this chapter; ~~one year~~ if the person has ~~one~~ previous revocation under those provisions; and five hundred forty days if the person has ~~two~~ one 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 department shall deny to the person the issuance of a license or permit for the same period a license or permit would be revoked, subject to review as provided in this chapter. The effective date of 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 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.

The department may, on application, issue a temporary restricted license to a person whose license has been subject to revocation under section 321.209, subsection 2, section 321.281, or this chapter, for a second or subsequent time to allow the person to drive to and from the person's home and place of employment, in the course of the person's employment, and to attend evaluation, treatment or educational services for alcohol or drug dependency, upon expiration of the first three hundred and sixty days of the person's period of revocation.

Sec. 14. Section 321B.13, Code 1983, is amended by adding the following new unlettered paragraph:

NEW UNLETTERED PARAGRAPH. The department may, on application, issue a temporary restricted license to a person whose license has been revoked under this section and who has entered a plea of guilty to a charge under section 321.281 when the person's regular employment includes the operation of a motor vehicle or who cannot perform the person's 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, or to attend court ordered community service, 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. 15. Section 321B.15, Code 1983, is amended to read as follows:

321B.15 TAKING SAMPLE FOR TEST. Only a licensed physician, physician's assistant as defined in section 148C.1, subsection 6, medical technologist or registered nurse, acting at the request of a peace officer, may withdraw ~~body substances~~ a specimen of blood for the purpose of determining the ~~alcoholic or drug content of the person's blood~~ alcohol concentration or the presence of 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 ~~alcoholic or drug content of the person's blood~~ alcohol concentration or the presence of drugs. Only new, originally factory wrapped, disposable syringes and needles, kept under strictly sanitary and sterile conditions shall be used for drawing blood.

PARAGRAPH DIVIDED. The person may have an independent chemical test or tests administered by a person of the person's own choosing and at the person's own expense 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 does not preclude the admission ~~in~~ of evidence of the results of the test or tests ~~taken administered~~ administered at the direction of the peace officer. Upon the request of the person who is tested, the results of the test or tests ~~taken administered~~ administered at the direction of the peace officer shall be made available to the person.

Sec. 16. Section 321B.16, Code 1983, is amended to read as follows:

321B.16 TEST RESULT REVOCATION. Upon certification by the peace officer that there existed reasonable grounds to believe ~~that~~ the person to have had been operating a motor vehicle in violation of section 321.281, ~~that there existed one or more of the necessary conditions for chemical testing described in section 321B.4, subsection 1,~~ and that the person submitted to chemical testing and the test results indicate indicated an alcohol concentration of 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~~ eighty days if the person has had no revocation within the

previous six years under section 321.209, subsection 2, section 321.281 or this chapter, ~~two hundred forty days if the person has one previous revocation under those provisions, and one year if the person has two had one or more previous 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. The peace officer offering a chemical test or directing who requested or directed the administration of a the chemical test may, on behalf of the department, serve immediate notice of intention to revoke and of revocation on a person when the person's whose test results indicate indicated an alcohol concentration of 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 person's 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 the officer's certificate indicating that the test results indicate indicated an alcohol concentration of 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 the person whose license has been revoked under this section when the person's regular employment includes the operation of a motor vehicle or who the person 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. 17. Section 321B.26, Code 1983, is amended to read as follows:

321B.26 HEARING. Upon the written request of a person whose privilege to drive has been revoked or denied, or who has been issued a twenty-day license pursuant to section 321B.13 or section 321B.16, the 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 ten days of the effective date of revocation or denial of driving privileges or the issuance of a temporary ~~permit~~ license. 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. The hearing may be recorded and its scope shall ~~cover be limited to the issues of whether a peace officer had reasonable grounds to believe that the person to have been was operating a motor vehicle in violation of section 321.281, whether and either 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 if a person consented to a test and whether the person should be issued a temporary restricted license indicated an alcohol concentration of ten hundredths or more.

PARAGRAPH DIVIDED. The department shall order that the revocation or denial be either rescinded or sustained.

Sec. 18. Section 321B.28, Code 1983, is amended to read as follows:

321B.28 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 a~~ person while operating a motor vehicle in violation of section 321.281, evidence of the amount of alcohol concentration

or the presence of drugs in the person's blood body substances at the time of the act alleged as shown by a chemical analysis of the person's blood, breath, saliva 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 and methods approved by the commissioner of public safety, no further foundation is necessary for introduction of the evidence.

Sec. 19. NEW SECTION. 321B.30 CIVIL PENALTY – VICTIM REPARATION FUND. When the department revokes a person's license or operating privilege under this chapter, the department shall assess the person a civil penalty of one hundred dollars. The money collected by the department under this section shall be transmitted to the treasurer of state who shall deposit the money in a separate fund dedicated to and used for the purposes of chapter 912. A temporary restricted license shall not be issued or a license or privilege to drive reinstated until the civil penalty has been paid.

Sec. 20. Section 907.4, Code 1983, is amended to read as follows:

907.4 DEFERRED JUDGMENT DOCKET. Any deferment of judgment under section 907.3 shall be reported promptly by the clerk of the district court to the supreme court administrator who shall maintain a permanent record thereof including the name of the defendant, the district court docket number, the nature of the offense, and the date of the deferment. Before granting deferment in any case, the court shall request of the supreme court administrator a search of the deferred judgment docket and shall consider any prior record of a deferment of judgment against the defendant. The permanent record provided for in this section shall constitute a confidential record exempted from public access under section 68A.7 and shall be available only to justices of the supreme court, judges of the court of appeals, district judges, district associate judges, and judicial magistrates, and county attorneys requesting information pursuant to this section or the designee of such justice, judge, or magistrate, or county attorney.

Sec. 21. Section 912.1, subsection 4, Code 1983, is amended to read as follows:

4. "Crime" means conduct that occurs or is attempted in this state, poses a substantial threat of personal injury or death, and is punishable as a felony, an aggravated misdemeanor, or a serious misdemeanor, or would be so punishable but for the fact that the person engaging in the conduct lacked the capacity to commit the crime under the laws of this state. "Crime" does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle, motorcycle, motorized bicycle, train, boat, or aircraft except for violations of section 321.281 or when the intention is to cause personal injury or death. A plea or verdict of guilty of a charge under section 321.281 or a license revocation under section 321B.13 or 321B.16 shall be considered by the department as evidence of a violation of section 321.281 for the purposes of this chapter.

Sec. 22. Section 912.6, Code 1983, is amended to read as follows:

912.6 COMPUTATION OF REPARATION. The commissioner shall make reparation, as appropriate, for any of the following economic losses incurred as a direct result of an injury to or death of the victim, not to exceed two thousand dollars per victim unless otherwise specified:

1. Reasonable charges incurred for medical care not to exceed ten thousand dollars.
2. Loss of income from work the victim would have performed and for which the victim would have received compensation for if the victim had not been injured not to exceed two thousand dollars.
3. Reasonable replacement value of clothing that is held for evidentiary purposes, but not to exceed one hundred dollars.

4. Reasonable funeral and burial expenses not to exceed ~~one~~ two thousand five hundred dollars.

5. Loss of support for dependents resulting from death or a period of disability of the victim of sixty days or more not to exceed two thousand dollars per dependent or a total of six thousand dollars.

*Sec. 23. Chapter 912, Code 1983, is amended by adding the following new section:

NEW SECTION. VICTIM REPARATION FUND. The money collected and deposited under section 321B.30 and remaining in the fund at the end of any annual or biennial period shall not revert to the state general fund but shall remain available for the payment of claims under this chapter. This fund is in addition to and may be supplemented by appropriations from the general assembly for the payment of claims or operational expenses of the program.*

Sec. 24. Section 912.13, Code 1983, is repealed.

Sec. 25. Section 24 of this Act, being deemed of immediate importance, takes effect from and after the Act's publication in the Onawa Democrat, a newspaper published in Onawa, Iowa, and in the Diamond Trail News, a newspaper published in Sully, Iowa.

Sec. 26. **STUDY COMMITTEE CREATED.**

1. There is established a committee to study the laws and penalties relating to operating motor vehicles while intoxicated composed of ten members. The members shall be appointed as follows:

a. The chief justice of the supreme court shall select one judge to be a member and chair the committee.

b. The Iowa county attorneys association shall select one member of their organization as a member.

c. The Iowa public defenders association shall select one member of their organization as a member.

d. The department of public safety shall select an employee as a member.

e. The department of transportation shall select an employee of that department as a member.

f. The Iowa department of justice shall select an employee of that department as a member.

g. The Iowa department of substance abuse shall select an employee as a member.

h. The legislative council shall select an attorney experienced in the defense of those charged with driving while intoxicated as a member.

i. The legislative council shall select a person with professional experience in substance abuse treatment as a member.

j. The legislative council shall appoint one member of the legislature as a member.

All members of the study committee shall be appointed not later than thirty days from the effective date of this Act. The study committee shall hold its organizational meeting not more than thirty days following the appointment of its membership.

2. Public members of the study committee shall receive a per diem of forty dollars and be reimbursed for their travel and other necessary expenses actually incurred in the performance of their official duties. Public employees who are members of the study committee shall be reimbursed for travel and other expenses actually incurred in the performance of their official duties.

3. The study committee shall conduct a comprehensive study of the laws and penalties presently in the Code relating to the operation of a motor vehicle by a person who is intoxicated and make recommendations for any changes in the law the committee deems

*Item veto; see message at end of this Act

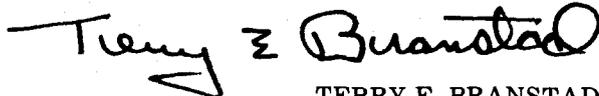
necessary. The study committee may request assistance of any state or local government agency to obtain any data or other information which the study committee deems necessary to carry out its duties. The state and local government agencies shall provide any assistance requested by the study committee.

4. The study committee may request that the legislative council provide staff for the study committee from the staff of the legislative service bureau and the legislative fiscal bureau.

5. The study committee shall transmit copies of its final report to the general assembly on January 14, 1985. The final report shall include findings of fact and its recommendations and relevant data gathered by and for the committee.

Sec. 27. The beer and liquor control commission shall submit to the general assembly on January 14, 1985, its recommendations for a revised schedule of civil penalties to be assessed upon licensees or permittees in the alternative to other penalties for violations of section 123.49 as established in section 1 of this Act. The proposed schedule of civil penalties shall be graduated on a proportional basis on both the annual dollar amount of beer and liquor sales conducted by the licensee or permittee and on the order of the violation as a first, second, or third offense.

Approved May 14, 1984, except the two items which I hereby disapprove and which are designated as that portion of section 1 which is herein bracketed in ink and initialed by me; and section 23 which is herein bracketed in ink and initialed by me. These are all delineated with my reasons for vetoing in the item veto message pertaining to this act to the Secretary of State this same date, a copy of which is attached hereto.



TERRY E. BRANSTAD
Governor

I hereby certify that the foregoing Act, House File 2486 was published in the Diamond Trail News, Sully, Iowa on May 23, 1984 and in the Onawa Democrat, Onawa, Iowa on May 24, 1984.

MARY JANE ODELL, *Secretary of State*

The Honorable Mary Jane Odell
Secretary of State
State Capitol Building
L O C A L

Dear Madam Secretary:

I hereby transmit House File 2486, an act relating to the offense of operating a motor vehicle while intoxicated by providing civil penalties to be assessed against licensees or permittees, by requiring the dismissal of vendors for selling alcohol to a minor, by providing a definition of alcohol concentration, by providing a special license for persons age nineteen and under, by providing a fine or community service in addition to imprisonment for a first offense and requiring a substance abuse evaluation for a second or subsequent offense of operating a motor vehicle while intoxicated, by providing additional periods of revocation for drivers convicted of operating a motor vehicle while intoxicated who caused an accident in which there was a serious injury or death, by providing for restitution by offending drivers for any damage caused, by providing a special revocation period for persons age nineteen or under, by providing a civil penalty to be assessed against persons convicted of operating a motor vehicle while intoxicated to be used to finance the victim reparation fund, by providing access to the record of previous deferred judgments by county attorneys, and by establishing a study committee to conduct a study on present laws and penalties relating to the offense of operating a motor vehicle while intoxicated and make any recommendations for changes in the law in a report to the General Assembly.

House File 2486 is approved May 14, 1984, with the following exceptions which I hereby disapprove.

I am unable to approve the items designated in the Act as Section 1, New Subsection 4, and Section 23 which read as follows:

Section 1. Section 123.50, Code 1983, is amended by adding the following new subsections:

NEW SUBSECTION. 4. The department shall adopt rules to establish civil penalties in the amount of one hundred dollars for a first offense, two hundred fifty dollars for a second offense, and five hundred dollars for a third offense which the department shall, subject to the discretion of the director, assess against licensees or permittees for violations of section 123.49 as an alternative to other penalties fixed for such violations by this section. Money collected from penalties assessed under this subsection shall be deposited with the Iowa department of substance abuse for use in substance abuse treatment programs.

Sec. 23. Chapter 912, Code 1983, is amended by adding the following new section:

NEW SECTION. VICTIM REPARATION FUND. The money collected and deposited under section 321B.30 and remaining in the fund at the end of any annual or biennial period shall not revert to the state general fund but shall remain

available for the payment of claims under this chapter. This fund is in addition to and may be supplemented by appropriations from the general assembly for the payment of claims or operational expenses of the program.

These earmarking provisions make a direct, ongoing appropriation to the Department of Substance Abuse and the Victim Reparation Fund. They result in the loss of oversight on the appropriations process by the executive and legislative branches of State Government. The funds not paid out in claims should be allowed to revert to the General Fund like other appropriations.

I am disappointed that, despite my earlier veto of the Victim Reparation Fund because of a similar earmarking provision, the majority in the General Assembly rejected several attempts to continue the Victim Reparation Program without earmarking.

The earmarking of funds directly from a source of revenue to an expenditure with a provision preventing any reversion to the state General Fund is an ongoing appropriation. Earmarking is a bad policy that has been consistently opposed by recent Iowa Governors. As I stated in my veto message of Senate File 2270 on April 13, 1984, "earmarking funds would set a troublesome precedent for the future."

For these reasons, I respectfully disapprove of the language designated above in accordance with Amendment 4 of the Amendments of 1968 to the Constitution of the State of Iowa. All other items of House File 2486 are hereby approved as of this date.

Very truly yours,

A handwritten signature in black ink that reads "Terry E. Branstad". The signature is written in a cursive style with a large, looped "B" and a stylized "T".

Terry E. Branstad
Governor