

MAR 7 2006
Place On Calendar

HOUSE FILE 2687
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 548)

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

A BILL FOR

1 An Act relating to the prosecution of certain criminal offenses
2 and the gathering of evidence for prosecution.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2687

DIVISION I

SEPARATE CONVICTIONS

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3 Section 1. Section 123.91, Code 2005, is amended to read
4 as follows:

5 123.91 SECOND AND SUBSEQUENT CONVICTION.

6 1. Any person who has been convicted, in a criminal
7 action, in any court of record, of a violation of a provision
8 of this chapter, a provision of the prior laws of this state
9 relating to intoxicating liquors, wine, or beer which was in
10 force prior to the enactment of this chapter, or a provision
11 of the laws of the United States or of any other state
12 relating to intoxicating liquors, wine, or beer, and who is
13 thereafter convicted of a subsequent criminal offense ~~against~~
14 in violation of any provision of this chapter is guilty of the
15 following offenses:

16 ~~1-~~ a. For the second conviction, a serious misdemeanor.

17 ~~2-~~ b. For the third and each subsequent conviction, an
18 aggravated misdemeanor.

19 2. Each previous violation, on which conviction was
20 entered prior to the date of the offense charged, shall be
21 considered and counted as a separate previous conviction.

22 Sec. 2. Section 124.401, subsection 5, Code 2005, is
23 amended to read as follows:

24 5. a. It is unlawful for any person knowingly or
25 intentionally to possess a controlled substance unless such
26 substance was obtained directly from, or pursuant to, a valid
27 prescription or order of a practitioner while acting in the
28 course of the practitioner's professional practice, or except
29 as otherwise authorized by this chapter. Any person who
30 violates this subsection is guilty of a serious misdemeanor
31 for a first offense. A person who commits a violation of this
32 subsection and who has previously been convicted of violating
33 this chapter or chapter 124A, 124B, or 453B is guilty of an
34 aggravated misdemeanor. A person who commits a violation of
35 this subsection and has previously been convicted two or more

1 times of violating this chapter or chapter 124A, 124B, or 453B
2 is guilty of a class "D" felony.

3 b. If the controlled substance is marijuana, the
4 punishment shall be by imprisonment in the county jail for not
5 more than six months or by a fine of not more than one
6 thousand dollars, or by both such fine and imprisonment for a
7 first offense. If the controlled substance is marijuana and
8 the person has been previously convicted of a violation of
9 this subsection in which the controlled substance was
10 marijuana, the punishment shall be as provided in section
11 903.1, subsection 1, paragraph "b". If the controlled
12 substance is marijuana and the person has been previously
13 convicted two or more times of a violation of this subsection
14 in which the controlled substance was marijuana, the person is
15 guilty of an aggravated misdemeanor.

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

22 d. If a person commits a violation of this subsection, the
23 court shall order the person to serve a term of imprisonment
24 of not less than forty-eight hours. Any sentence imposed may
25 be suspended, and the court shall place the person on
26 probation upon such terms and conditions as the court may
27 impose. If the person is not sentenced to confinement under
28 the custody of the director of the department of corrections,
29 the terms and conditions of probation shall require submission
30 to random drug testing. If the person fails a drug test, the
31 court may transfer the person's placement to any appropriate
32 placement permissible under the court order.

33 e. If the controlled substance is amphetamine, its salts,
34 isomers, or salts of its isomers, or methamphetamine, its
35 salts, isomers, or salts of its isomers, the court shall order

1 the person to serve a term of imprisonment of not less than
2 forty-eight hours. Any sentence imposed may be suspended, and
3 the court shall place the person on probation upon such terms
4 and conditions as the court may impose. The court may place
5 the person on intensive probation. However, the terms and
6 conditions of probation shall require submission to random
7 drug testing. If the person fails a drug test, the court may
8 transfer the person's placement to any appropriate placement
9 permissible under the court order.

10 f. Each previous violation of this subsection on which
11 conviction was entered prior to the date of the offense
12 charged shall be considered and counted as a separate previous
13 conviction.

14 Sec. 3. NEW SECTION. 714.2A SEPARATE CONVICTIONS.

15 Each previous violation of this chapter on which conviction
16 was entered prior to the date of the offense charged shall be
17 considered and counted as a separate previous conviction.

18 DIVISION II

19 SERIOUS INJURY -- OWI

20 Sec. 4. Section 321J.10, subsection 1, paragraph a, Code
21 2005, is amended to read as follows:

22 a. A traffic accident has resulted in a death or ~~personal~~
23 ~~injury-reasonably-likely-to-cause-death~~ serious injury.

24 Sec. 5. Section 321J.10A, subsection 1, unnumbered
25 paragraph 1, Code 2005, is amended to read as follows:

26 Notwithstanding section 321J.10, if a person is under
27 arrest for an offense arising out of acts alleged to have been
28 committed while the person was operating a motor vehicle in
29 violation of section 321J.2 or 321J.2A, and that arrest
30 results from an accident that causes a death or ~~personal~~
31 ~~injury-reasonably-likely-to-cause-death~~ serious injury, a
32 chemical test of blood may be administered without the consent
33 of the person arrested to determine the amount of alcohol or a
34 controlled substance in that person's blood if all of the
35 following circumstances exist:

EXPLANATION

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This bill relates to the prosecution of certain criminal offenses and the gathering of evidence for prosecution.

Under the bill, a person may be charged with another criminal offense if the person has a previous violation on which conviction or deferral of judgment was entered prior to the date of the current offense charged for the following offenses: public intoxication (Code section 123.91), possession of a controlled substance offense (Code section 124.401(5)), and any theft in violation of Code section 714.7D or Code section 714.26.

Under the bill, a person who is alleged to be operating a motor vehicle while intoxicated may be required to submit to a chemical test of blood, without the consent of the person, if the person is involved in an accident that causes death or serious injury. "Serious injury" is defined in Code section 321J.1, subsection 9, to mean a bodily injury which creates substantial risk of death, or which causes serious permanent disfigurement, or which causes protracted loss or impairment of the function of any bodily organ or major bodily member, or which causes the loss of any bodily member. Current law provides the person may be required to submit to a chemical test of blood, without the consent of the person, if the person is involved in an accident that causes death or personal injury reasonably likely to cause death.

HOUSE FILE 2687

H-8274

1 Amend House File 2687 as follows:

2 1. Page 3, by striking line 19 and inserting the
3 following: "CREATING A SUBSTANTIAL RISK OF DEATH --
4 OWI".

5 2. Page 3, line 23, by striking the words
6 "serious injury" and inserting the following: "bodily
7 injury creating a substantial risk of death".

8 3. Page 3, line 31, by striking the words
9 "serious injury" and inserting the following: "bodily
10 injury creating a substantial risk of death".

By R. OLSON of Polk

H-8274 FILED MARCH 15, 2006

Kaufmann ch
Paulsen
Swain

HSB 548
JUDICIARY

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON PAULSEN)

Succeeded By
or 02687

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
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20 substantial risk of death, or which causes serious permanent
21 disfigurement, or which causes protracted loss or impairment
22 of the function of any bodily organ or major bodily member, or
23 which causes the loss of any bodily member. Current law
24 provides the person may be required to submit to a chemical
25 test of blood, without the consent of the person, if the
26 person is involved in an accident that causes death or
27 personal injury reasonably likely to cause death.

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