

**IN THE COURT OF APPEALS OF IOWA**

No. 0-214 / 09-1189  
Filed February 9, 2011

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**HARLEY ALEON HARMS,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Hancock County, John S. Mackey,  
Judge.

Interlocutory appeal from the denial of a motion to suppress. **AFFIRMED.**

Colin C. Murphy of Law Offices of Colin C. Murphy, P.C., Mason City, for  
appellant.

Thomas J. Miller, Attorney General, Jean Pettinger, Assistant Attorney  
General, and Karen R. Kaufman Salic, County Attorney, for appellee.

Considered by Sackett, C.J., and Doyle and Danilson, JJ. Tabor, J., takes  
no part.

**PER CURIAM**

Defendant, Harley Aleon Harms, was granted discretionary review of a district court ruling denying his motion to suppress the results of his chemical test for intoxication. He contends the district court erred in denying his motion to suppress because the implied consent advisory given to him was inaccurate and misleading regarding the consequences of a breath test failure on his commercial driving privileges, so his consent to testing was not knowing or voluntary. We affirm.

**Background.** At the time of the traffic stop in March of 2009, Harms was operating his personal pickup truck. He has a class A commercial driver's license. The trooper invoked implied consent and read an implied consent advisory containing this language:

If you hold a commercial driver's license the department will disqualify your commercial driving privilege for one year *if you submit to the test and fail it*, you refuse to take the test, or were operating while under the influence of an alcoholic beverage or other drug or controlled substance of a combination of such substances.

Harms consented to the breath test and the test result indicated a blood alcohol concentration greater than 0.08. He was charged with operating while intoxicated. Harms filed a motion to suppress, claiming the implied consent advisory was misleading and erroneous concerning the consequences of a breath test failure on his commercial driving privileges under Iowa Code section 321J.8 (2009). The district court denied the motion. Harms sought discretionary review, which the supreme court granted.

**Scope of Review.** Our review of issues involving statutory interpretation is for correction of errors at law. Iowa R. App. P. 6.907; *State v. Wade*, 757 N.W.2d 618, 622 (Iowa 2008). To the extent the issues raised implicate his substantive due process rights, our review is de novo. *State v. Massengale*, 745 N.W.2d 499, 500 (Iowa 2008).

**Merits.** Harms contends the district court erred in denying his motion to suppress because the implied consent advisory was inaccurate and misleading concerning the consequences, under Iowa Code section 321J.8, of a breath test failure on his commercial driving privileges. Section 321J.8 specifies what information must be conveyed by the implied consent advisory. See *Massengale*, 745 N.W.2d at 503. At the time of his arrest, that section provided, in pertinent part:

If the person is operating a noncommercial motor vehicle and holding a commercial driver's license as defined in section 321.1 and either refuses to submit to the test *or operates a motor vehicle while under the influence of an alcoholic beverage or other drug or controlled substance or a combination of such substances*, the person is disqualified from operating a commercial motor vehicle for the applicable period under section 321.208 in addition to any revocation of the person's driver's license or nonresident operating privilege which may be applicable under this chapter.

Iowa Code § 321J.8(1)(c)(2) (emphasis added). Harms contends the statute does not authorize disqualification of his commercial driving privileges “if you submit to the test and fail it” (“test failure”) as stated in the advisory read to him.

In discussing section 321.208(2), our supreme court in *Massengale* stated that provision provides for “a one year CDL revocation for an individual who refused *or failed chemical testing* regardless of whether the individual was operating a commercial or noncommercial motor vehicle.” 745 N.W.2d at 503

(emphasis added). Later, the court again stated that under section 321.208(2), “an individual, such as Massengale, holding a CDL and driving a noncommercial vehicle will lose his commercial driving privileges for one year if he refuses *or fails chemical testing.*” *Id.* (emphasis added); see also *State v. Garcia*, 756 N.W.2d 216, 222 (Iowa 2008) (noting the purpose of section 321J.8 “is to advise accused drivers of the consequences of submitting to *or failing the chemical test*” (emphasis added)). Harms urges us to ignore these statements as dicta because the issue presented in this case was not considered by the court in *Massengale*. The district court rejected this argument and so do we.

Our decision to follow the language in *Massengale* is supported by subsequent amendments to sections 321J.8(1)(c)(2) and 321.208(2). The version of section 321.208(2) in effect at the time of Harms’s arrest was enacted in 2005. See *Massengale*, 745 N.W.2d at 503. Section 321J.8(1)(c)(2) was amended to conform to section 321.208(2) in 2007. *Id.* at 504. Since those amendments, controversies regarding the interpretation of sections 321J.8(1)(c)(2) and 321.208 have arisen in district court and administrative proceedings. Both statutes were amended in 2009. 2009 Iowa Acts ch. 130, §§ 9, 10, 14. Section 321J.8(1)(c)(2) (2011) now provides:

If the person is operating a noncommercial motor vehicle and holding a commercial driver’s license as defined in section 321.1 and either refuses to submit to the test *or submits to the test and the results indicate the presence of a controlled substance or other drug or an alcohol concentration equal to or in excess of the level prohibited by section 321J.2*, the person is disqualified from operating a commercial motor vehicle for the applicable period under section 321.208 in addition to any revocation of the person’s driver’s license or nonresident operating privilege which may be applicable under this chapter.

(Emphasis added.) Section 321.208(2)(a) was similarly amended and now provides for revocation of a commercial driver's license upon a conviction or final administrative decision that the person was "[o]perating a motor vehicle while intoxicated, as provided in section 321J.2, subsection 1."

Given the timing and circumstances surrounding these amendments, we conclude the legislature intended to clarify the existing legislation by stating that a person's commercial driver's license may be disqualified under any of the alternatives set forth in section 321J.2(1). See *State v. Guzman-Juarez*, 591 N.W.2d 1, 3 (Iowa 1999). The language of the amendments does not show a clear and unmistakable intent to change the law. See *id.* Nor do the amendments materially change the law so as to give rise to a presumption the legislature intended to alter the law. *Id.*; cf. *State v. Ahitow*, 544 N.W.2d 270, 273 (Iowa 1996) (determining an amendment to a criminal statute broadened the scope and altered the law).

Even assuming Harms's commercial driver's license could not have been revoked for failing a breath test, the "ultimate question" in cases like this "is whether the decision to comply with a valid request under the implied-consent law is a reasoned and informed decision." *State v. Bernhard*, 657 N.W.2d 469, 473 (Iowa 2003). "[N]ot every inaccurate depiction by law enforcement officers that might bear on a subject's election to submit to chemical testing is a basis for suppressing the test results." *Id.*

Harms was advised of the "key revocation information" regarding his commercial driver's license in the implied consent advisory read to him. *State v.*

*Kentner*, 562 N.W.2d 431, 433 (Iowa 1997) (rejecting the argument the officer was required to inform a driver when the revocation would become effective). He was advised “of the consequences of refusing to take the test and the consequences of a positive test result, including the potential periods of revocation.” *Voss v. Iowa Dep’t of Transp.*, 621 N.W.2d 208, 211 (Iowa 2001). After being informed his commercial driver’s license was subject to revocation if he refused the test or if he was operating while under the influence, Harms does not explain how also being informed his license was subject to revocation if he submitted to the test and failed it, affected his ability to make a reasoned and informed decision. Harms submitted to the test. The language he challenges as inaccurate or misleading, if anything, should have made him more reluctant to submit to the test.

We affirm the district court’s denial of Harm’s motion to suppress.

**AFFIRMED.**