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SENATE FILE 2174  
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(COMPANION TO LSB 7648H  
BY GARMAN)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to the operation of motor vehicles by persons  
2 under age twenty-one, enacting provisions governing implied  
3 consent to chemical testing and the use of a test result as a  
4 basis for a license revocation, providing penalties, and  
5 providing for other properly related matters.

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

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SE 2174

1 Section 1. NEW SECTION. 321N.1 DEFINITIONS.

2 As used in this chapter unless the context otherwise  
3 requires:

4 1. "Alcohol concentration" means the number of grams of  
5 alcohol per any of the following:

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

9 2. "Alcoholic beverage" includes alcohol, wine, spirits,  
10 beer, or any other beverage which contains ethyl alcohol and  
11 is fit for human consumption.

12 3. "Arrest" includes but is not limited to taking into  
13 custody pursuant to section 232.19.

14 4. "Department" means the state department of  
15 transportation.

16 5. "Director" means the director of transportation or the  
17 director's designee.

18 6. "Motor vehicle license" means any license or permit  
19 issued to a person to operate a motor vehicle in this state.

20 7. "Peace officer" means:

- 21 a. A member of the highway patrol.
- 22 b. A police officer under civil service as provided in  
23 chapter 400.

24 c. A sheriff.

25 d. A regular deputy sheriff who has had formal police  
26 training.

27 e. Any other law enforcement officer who has  
28 satisfactorily completed an approved course relating to motor  
29 vehicle operators under the influence of alcoholic beverages  
30 at the Iowa law enforcement academy or a law enforcement  
31 training program approved by the department of public safety.

32 Sec. 2. NEW SECTION. 321N.2 PRELIMINARY SCREENING TEST.

33 When a peace officer has reasonable grounds to believe that  
34 a motor vehicle operator under the age of twenty-one may be or  
35 has been operating a motor vehicle while having an alcohol

1 concentration as defined in section 321N.1 of more than .00,  
2 the peace officer may request the operator to provide a sample  
3 of the operator's breath for a preliminary screening test  
4 using a device approved by the commissioner of public safety  
5 for that purpose. The results of this preliminary screening  
6 test may be used for the purpose of deciding whether an arrest  
7 should be made and whether to request a chemical test  
8 authorized in this chapter or chapter 321J, as evidence of the  
9 presence of alcohol in the operator, and to prove that a  
10 chemical test was properly requested of a person pursuant to  
11 this chapter or chapter 321J.

12 Sec. 3. NEW SECTION. 321N.3 IMPLIED CONSENT TO TEST.

13 1. A person under the age of twenty-one who operates a  
14 motor vehicle in this state under circumstances which give  
15 reasonable grounds to believe that the person has been  
16 operating a motor vehicle while having an alcohol  
17 concentration of more than .00 is deemed to have given consent  
18 to the withdrawal of specimens of the person's blood, breath,  
19 or urine and to a chemical test or tests of the specimens for  
20 the purpose of determining the alcohol concentration, subject  
21 to this section. The withdrawal of the body substances and  
22 the test or tests shall be administered at the written request  
23 of a peace officer having reasonable grounds to believe that  
24 the person was operating a motor vehicle while having an  
25 alcohol concentration of more than .00.

26 2. The peace officer shall determine which of the three  
27 substances, breath, blood, or urine, shall be tested. Refusal  
28 to submit to a chemical test of urine or breath is deemed a  
29 refusal to submit, and section 321N.6 applies. A refusal to  
30 submit to a chemical test of blood is not deemed a refusal to  
31 submit, but in that case, the peace officer shall then  
32 determine which one of the other two substances shall be  
33 tested and shall offer the test. If the peace officer fails  
34 to offer a test within two hours after the preliminary  
35 screening test is administered or refused or the arrest is

1 made, whichever occurs first, a test is not required, and  
2 there shall be no revocation under section 321N.6.

3 Sec. 4. NEW SECTION. 321N.4 DEAD OR UNCONSCIOUS PERSONS.

4 A person who is dead, unconscious, or otherwise in a  
5 condition rendering the person incapable of consent or refusal  
6 is deemed not to have withdrawn the consent provided by  
7 section 321N.3, and the test may be given if a licensed  
8 physician certifies in advance of the test that the person is  
9 dead, unconscious, or otherwise in a condition rendering that  
10 person incapable of consent or refusal.

11 Sec. 5. NEW SECTION. 321N.5 STATEMENT OF OFFICER.

12 A person who has been requested to submit to a chemical  
13 test shall be advised by a peace officer of the following:

14 1. If the person refuses to submit to the test and is less  
15 than eighteen years of age, the person's license or operating  
16 privilege will be revoked by the department for one year or  
17 until the person's eighteenth birthday, whichever is longer,  
18 without eligibility for a temporary restricted license. If  
19 the person refuses to submit to the test and is at least  
20 eighteen years of age but less than twenty-one years of age,  
21 the person's motor vehicle license or operating privilege will  
22 be revoked by the department for ninety days without  
23 eligibility for a temporary restricted license.

24 2. If the person submits to the test and the results  
25 indicate an alcohol concentration as defined in section 321N.1  
26 of more than .00, and the person is under eighteen years of  
27 age, the person's license or operating privilege will be  
28 revoked by the department for a period of two hundred seventy  
29 days, without eligibility for a temporary restricted license.

30 If the person submits to the test and the results indicate  
31 an alcohol concentration as defined in section 321N.1 of more  
32 than .00, and the person is at least eighteen years of age but  
33 less than twenty-one years of age, the person's motor vehicle  
34 license or operating privilege will be revoked by the  
35 department for thirty days without eligibility for a temporary

1 restricted license.

2 This section does not apply in any case involving a person  
3 described in section 321N.4.

4 Sec. 6. NEW SECTION. 321N.6 REFUSAL TO SUBMIT --  
5 REVOCATION.

6 If a person who is under eighteen years of age refuses to  
7 submit to the chemical testing, a test shall not be given, but  
8 the department, upon the receipt of the peace officer's  
9 certification, subject to penalty for perjury, that the  
10 officer had reasonable grounds to believe the person to have  
11 been operating a motor vehicle while having an alcohol concen-  
12 tration of more than .00, and that the person refused to  
13 submit to the chemical testing, shall revoke the person's  
14 motor vehicle license and any nonresident operating privilege  
15 for a period of one year or until the person's eighteenth  
16 birthday, whichever is longer.

17 If a person who is at least eighteen years of age but less  
18 than twenty-one years of age refuses to submit to the chemical  
19 testing, a test shall not be given, but the department, upon  
20 the receipt of the peace officer's certification, subject to  
21 penalty for perjury, that the officer had reasonable grounds  
22 to believe the person to have been operating a motor vehicle  
23 while having an alcohol concentration of more than .00, and  
24 that the person refused to submit to the chemical testing,  
25 shall revoke the person's motor vehicle license and any  
26 nonresident operating privilege for a period of ninety days.

27 The effective date of revocation shall be twenty days after  
28 receipt of notice of revocation to the person by certified  
29 mail or, on behalf of the department, a peace officer offering  
30 or directing the administration of a chemical test may serve  
31 immediate notice of intention to revoke and of revocation on a  
32 person who refuses to permit chemical testing. If the peace  
33 officer serves that immediate notice, the peace officer shall  
34 take the Iowa license or permit of the driver, if any, and  
35 issue a temporary license effective for only twenty days. The

1 peace officer shall immediately send the person's license to  
2 the department along with the officer's certificate indicating  
3 the person's refusal to submit to chemical testing.

4 Sec. 7. NEW SECTION. 321N.7 TAKING SAMPLE FOR TEST.

5 Only a licensed physician, licensed physician assistant as  
6 defined in section 148C.1, medical technologist, or registered  
7 nurse, acting at the request of a peace officer, may withdraw  
8 a specimen of blood for the purpose of determining the alcohol  
9 concentration. However, any peace officer, using devices and  
10 methods approved by the commissioner of public safety, may  
11 take a specimen of a person's breath or urine for the purpose  
12 of determining the alcohol concentration. Only new equipment  
13 kept under strictly sanitary and sterile conditions shall be  
14 used for drawing blood.

15 The person may have an independent chemical test or tests  
16 administered at the person's own expense in addition to any  
17 administered at the direction of a peace officer. The failure  
18 or inability of the person to obtain an independent chemical  
19 test or tests does not preclude the admission of evidence of  
20 the results of the test or tests administered at the direction  
21 of the peace officer. Upon the request of the person who is  
22 tested, the results of the test or tests administered at the  
23 direction of the peace officer shall be made available to the  
24 person.

25 Sec. 8. NEW SECTION. 321N.8 REVOCATION BASED ON TEST  
26 RESULTS.

27 Upon certification, subject to penalty for perjury, by the  
28 peace officer that there existed reasonable grounds to believe  
29 that the person had been operating a motor vehicle while  
30 having an alcohol concentration of more than .00, and that the  
31 person submitted to chemical testing and the test results  
32 indicated an alcohol concentration of more than .00, the  
33 department shall revoke the person's motor vehicle license or  
34 nonresident operating privilege for a period of two hundred  
35 seventy days if the person is less than eighteen years of age,

1 or for a period of thirty days if the person is at least  
2 eighteen years of age but less than twenty-one years of age.

3 The effective date of the revocation shall be twenty days  
4 after the receipt of notice of revocation to the person by  
5 certified mail. The peace officer who requested or directed  
6 the administration of the chemical test may, on behalf of the  
7 department, serve immediate notice of revocation on a person  
8 whose test results indicated an alcohol concentration of more  
9 than .00. If the peace officer serves that immediate notice,  
10 the peace officer shall take the person's Iowa license or  
11 permit, if any, and issue a temporary license valid only for  
12 twenty days. The peace officer shall immediately send the  
13 person's motor vehicle license to the department along with  
14 the officer's certificate indicating that the test results  
15 indicated an alcohol concentration of more than .00.

16 The results of a chemical test shall not be used as the  
17 basis for a revocation of a person's motor vehicle license or  
18 nonresident operating privilege if the alcohol concentration  
19 indicated by the chemical test minus the established margin of  
20 error inherent in the device or method used to conduct the  
21 chemical test does not equal an alcohol concentration of more  
22 than .00.

23 Sec. 9. NEW SECTION. 321N.9 HEARING ON REVOCATION --  
24 APPEAL.

25 i. Notice of revocation of a person's motor vehicle  
26 license or operating privilege served pursuant to section  
27 321N.6 or 321N.8 shall include a form accompanied by a  
28 preaddressed envelope on which the person served may indicate  
29 by a checkmark if the person wishes to contest the revocation.  
30 The form shall clearly state on its face that the form must be  
31 completed and returned within thirty days of receipt or the  
32 person's right to a hearing to contest the revocation is  
33 foreclosed. The form shall also be accompanied by a statement  
34 of the operation of and the person's rights under this  
35 chapter.

1 2. The department shall grant the person an opportunity to  
2 be heard within forty-five days of receipt of a request for a  
3 hearing if the request is made not later than thirty days  
4 after receipt of notice of revocation served pursuant to  
5 section 321N.6 or 321N.8. The hearing shall be before the  
6 department in the county where the alleged events occurred,  
7 unless the director and the person agree that the hearing may  
8 be held in some other county, or the hearing may be held by  
9 telephone conference at the discretion of the agency  
10 conducting the hearing. The hearing may be recorded and its  
11 scope shall be limited to the issues of whether a peace  
12 officer had reasonable grounds to believe that the person was  
13 operating a motor vehicle while having an alcohol  
14 concentration of more than .00 and either of the following:

- 15 a. Whether the person refused to submit to the test or
- 16 tests.
- 17 b. Whether a test was administered and the test results
- 18 indicated an alcohol concentration of more than .00.

19 3. After the hearing the department shall order that the  
20 revocation be either rescinded or sustained. Upon receipt of  
21 the decision of the department to sustain a revocation, the  
22 person contesting the revocation has ten days to file a  
23 request for review of the decision by the director. The  
24 director or the director's designee shall review the decision  
25 within fifteen days and shall either rescind or sustain the  
26 revocation or order a new hearing. If the director orders a  
27 new hearing, the department shall grant the person a new  
28 hearing within thirty days of the director's order.

29 Sec. 10. NEW SECTION. 321N.10 JUDICIAL REVIEW.

30 Judicial review of an action of the department may be  
31 sought in accordance with chapter 17A. Notwithstanding the  
32 terms of the Iowa administrative procedure Act, chapter 17A, a  
33 petition for judicial review may be filed in the district  
34 court in the county where the alleged events occurred or in  
35 the county in which the administrative hearing was held.

1       Sec. 11. NEW SECTION. 321N.11 EVIDENCE IN ANY ACTION.

2       Upon the trial of a civil or criminal action or proceeding  
3 arising out of acts alleged to have been committed by a person  
4 while operating a motor vehicle while having an alcohol  
5 concentration of more than .00, evidence of the alcohol  
6 concentration in the person's body substances at the time of  
7 the act alleged as shown by a chemical analysis of the  
8 person's blood, breath, or urine is admissible. If it is  
9 established at trial that an analysis of a breath specimen was  
10 performed by a certified operator using a device and methods  
11 approved by the commissioner of public safety, no further  
12 foundation is necessary for introduction of the evidence.

13       Sec. 12. NEW SECTION. 321N.12 PROOF OF REFUSAL  
14 ADMISSIBLE.

15       If a person refuses to submit to a chemical test, proof of  
16 refusal is admissible in any civil or criminal action or  
17 proceeding arising out of acts alleged to have been committed  
18 while the person was operating a motor vehicle while having an  
19 alcohol concentration of more than .00.

20       Sec. 13. NEW SECTION. 321N.13 CIVIL PENALTY -- SEPARATE  
21 FUND -- REINSTATEMENT.

22       When the department revokes a person's motor vehicle  
23 license or nonresident operating privilege under this chapter,  
24 the department shall assess the person a civil penalty of one  
25 hundred dollars. The money collected by the department under  
26 this section shall be transmitted to the treasurer of state  
27 who shall deposit the money in a separate fund dedicated to  
28 and used for the purposes of chapter 912 and section 709.10.  
29 A motor vehicle license or nonresident operating privilege  
30 shall not be reinstated until the civil penalty has been paid.

31       Sec. 14. NEW SECTION. 321N.14 OTHER EVIDENCE.

32       This chapter does not limit the introduction of any  
33 competent evidence bearing on the question of whether a person  
34 was under the influence of an alcoholic beverage, including  
35 the results of chemical tests of specimens of blood, breath or

1 urine obtained more than two hours after the person was  
2 operating a motor vehicle.

3 Sec. 15. NEW SECTION. 321N.15 INFORMATION RELAYED TO  
4 OTHER STATES.

5 When it has been finally determined under this chapter that  
6 a nonresident's privilege to operate a motor vehicle in this  
7 state has been revoked or denied, the department shall give  
8 information in writing of the action taken to the official in  
9 charge of traffic control or public safety of the state of the  
10 person's residence and of any state in which the person has a  
11 license.

12 Sec. 16. NEW SECTION. 321N.16 TEMPORARY RESTRICTED  
13 LICENSE PROHIBITED.

14 A person whose motor vehicle license has been revoked under  
15 this chapter is not eligible for a temporary restricted  
16 license during the period of revocation.

17 Sec. 17. NEW SECTION. 321N.17 DRIVING WHILE LICENSE  
18 DENIED OR REVOKED.

19 A person whose motor vehicle license or nonresident  
20 operating privilege has been denied or revoked as provided in  
21 this chapter and who drives a motor vehicle upon the highways  
22 of this state while the license or privilege is denied or  
23 revoked commits a serious misdemeanor. The department, upon  
24 receiving the record of the conviction of a person under this  
25 section upon a charge of driving a motor vehicle while the  
26 license of the person was revoked or denied, shall extend the  
27 period of revocation or denial for an additional like period,  
28 and the department shall not issue a new license during the  
29 additional period.

30 Sec. 18. NEW SECTION. 321J.23 PERSONS UNDER AGE TWENTY-  
31 ONE.

32 If a person under the age of twenty-one consents to a  
33 chemical test under this chapter and the test results indicate  
34 an alcohol concentration of more than .00 but less than the  
35 level established in section 321J.2, subsection 1, the per-

1 son's motor vehicle license or nonresident operating privilege  
2 shall be revoked for a period of one year or until the person  
3 reaches eighteen years of age, whichever is longer, if the  
4 person is less than eighteen years of age, or for thirty days  
5 as provided in section 321N.8 if the person is at least  
6 eighteen years of age but less than twenty-one years of age,  
7 and sections 321N.8 through 321N.17 apply.

8 EXPLANATION

9 This bill establishes a new chapter tentatively numbered  
10 321N relating to the revocation or suspension of the motor  
11 vehicle license of a person under age 21. A .00 alcohol  
12 concentration level is established for a test result  
13 revocation for such persons. No temporary restricted license  
14 is to be issued to a person whose operator's license is  
15 revoked or suspended under this chapter.

16 If a person under the age of 18 refuses to submit to a  
17 chemical test as requested, the person's motor vehicle license  
18 or operating privilege will be revoked for a period of one  
19 year or until the person's 18th birthday. If the person is at  
20 least 18, but less than 21, the person's motor vehicle license  
21 or operating privilege will be revoked for 90 days. A  
22 temporary restricted license will not be issued in either  
23 case.

24 If a person submits to a chemical test and test results  
25 indicate an alcohol concentration of more than .00, the  
26 person's motor vehicle license, or operating privilege shall  
27 be revoked for a period of 270 days if the person is under age  
28 18, or for a period of 30 days if the person is at least 18  
29 but less than 21 years old.

30 The criminal sanctions remain the same as provided in  
31 chapter 321J.

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