

Just Energy

FILED FEB 26 1991

FILE

30

SENATE FILE 243

BY HESTER

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, preventing the issuance of
 5 temporary restricted licenses, providing penalties, and
 6 providing for other properly related matters.

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

- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

SF 243

1 Section 1. Section 321J.4, subsection 8, Code 1991, is
2 amended to read as follows:

3 8. A person whose motor vehicle license has either been
4 revoked under this chapter, or revoked or suspended under
5 chapter 321 solely for violations of this chapter, or who has
6 been determined to be a habitual offender under chapter 321
7 based solely on violations of this chapter, and who is not
8 eligible for a temporary restricted license under this chapter
9 may petition the court for an order to the department to
10 require the department to issue a temporary restricted license
11 to the person notwithstanding section 321.560. The court
12 shall determine if the temporary restricted license is
13 necessary for the person to maintain the person's present
14 employment. If the court determines that the temporary
15 restricted license is necessary for the person to maintain the
16 person's present employment, and the person was twenty-one
17 years of age or older when the violation occurred, the court
18 shall order the department to issue to the person a temporary
19 restricted license conditioned upon the person's certification
20 to the court of the installation of approved ignition
21 interlock devices in all motor vehicles that it is necessary
22 for the person to operate to maintain the person's present
23 employment. Section 321.561 does not apply to a person
24 operating a motor vehicle in the manner permitted under this
25 subsection. If the person operates a motor vehicle which does
26 not have an approved ignition interlock device or if the
27 person tampers with or circumvents an ignition interlock
28 device, in addition to other penalties provided, the person's
29 temporary restricted license shall be revoked. A person
30 holding a temporary restricted license issued under this
31 subsection shall not operate a commercial motor vehicle, as
32 defined in section 321.1, on a highway if a commercial
33 driver's license is required for the person to operate the
34 commercial motor vehicle.

35 Sec. 2. NEW SECTION. 321J.23 PERSONS UNDER AGE TWENTY-

1 ONE.

2 If a person under the age of twenty-one consents to a
3 chemical test under this chapter and the test results indicate
4 an alcohol concentration of more than .02 but less than the
5 level established in section 321J.2, subsection 1, the per-
6 son's motor vehicle license or operating privilege shall be
7 revoked for a period of one year or until the person reaches
8 eighteen years of age, whichever is longer, if the person is
9 less than eighteen years of age, or for thirty days as
10 provided in section 321N.8 if the person is at least eighteen
11 years of age but less than twenty-one years of age, and
12 sections 321N.8 through 321N.17 apply.

13 Sec. 3. NEW SECTION. 321N.1 DEFINITIONS.

14 As used in this chapter unless the context otherwise
15 requires:

16 1. "Alcohol concentration" means the number of grams of
17 alcohol per any of the following:

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

21 2. "Alcoholic beverage" includes alcohol, wine, spirits,
22 beer, or any other beverage which contains ethyl alcohol and
23 is fit for human consumption.

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

26 4. "Department" means the state department of
27 transportation.

28 5. "Director" means the director of transportation or the
29 director's designee.

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

32 7. "Peace officer" means:

- 33 a. A member of the highway patrol.
- 34 b. A police officer under civil service as provided in
35 chapter 400.

1 c. A sheriff.

2 d. A regular deputy sheriff who has had formal police
3 training.

4 e. Any other law enforcement officer who has
5 satisfactorily completed an approved course relating to motor
6 vehicle operators under the influence of alcoholic beverages
7 at the Iowa law enforcement academy or a law enforcement
8 training program approved by the department of public safety.

9 Sec. 4. NEW SECTION. 321N.2 PRELIMINARY SCREENING TEST.

10 When a peace officer has reasonable grounds to believe that
11 a motor vehicle operator under the age of twenty-one may be or
12 has been operating a motor vehicle while having an alcohol
13 concentration as defined in section 321N.1 of more than .02,
14 the peace officer may request the operator to provide a sample
15 of the operator's breath for a preliminary screening test
16 using a device approved by the commissioner of public safety
17 for that purpose. The results of this preliminary screening
18 test may be used for the purpose of deciding whether an arrest
19 should be made and whether to request a chemical test
20 authorized in this chapter or chapter 321J, as evidence of the
21 presence of alcohol in the operator, and to prove that a
22 chemical test was properly requested of a person pursuant to
23 this chapter or chapter 321J.

24 Sec. 5. NEW SECTION. 321N.3 IMPLIED CONSENT TO TEST.

25 1. A person under the age of twenty-one who operates a
26 motor vehicle in this state under circumstances which give
27 reasonable grounds to believe that the person has been
28 operating a motor vehicle while having an alcohol
29 concentration of more than .02 is deemed to have given consent
30 to the withdrawal of specimens of the person's blood, breath,
31 or urine and to a chemical test or tests of the specimens for
32 the purpose of determining the alcohol concentration, subject
33 to this section. The withdrawal of the body substances and
34 the test or tests shall be administered at the written request
35 of a peace officer having reasonable grounds to believe that

1 the person was operating a motor vehicle while having an
2 alcohol concentration of more than .02.

3 2. The peace officer shall determine which of the three
4 substances, breath, blood, or urine, shall be tested. Refusal
5 to submit to a chemical test of urine or breath is deemed a
6 refusal to submit, and section 321N.6 applies. A refusal to
7 submit to a chemical test of blood is not deemed a refusal to
8 submit, but in that case, the peace officer shall then
9 determine which one of the other two substances shall be
10 tested and shall offer the test. If the peace officer fails
11 to offer a test within two hours after the preliminary
12 screening test is administered or refused or the arrest is
13 made, whichever occurs first, a test is not required, and
14 there shall be no revocation under section 321N.6.

15 Sec. 6. NEW SECTION. 321N.4 DEAD OR UNCONSCIOUS PERSONS.

16 A person who is dead, unconscious, or otherwise in a
17 condition rendering the person incapable of consent or refusal
18 is deemed not to have withdrawn the consent provided by
19 section 321N.3, and the test may be given if a licensed
20 physician certifies in advance of the test that the person is
21 dead, unconscious, or otherwise in a condition rendering that
22 person incapable of consent or refusal.

23 Sec. 7. NEW SECTION. 321N.5 STATEMENT OF OFFICER.

24 A person who has been requested to submit to a chemical
25 test shall be advised by a peace officer of the following:
26 1. If the person refuses to submit to the test and is less
27 than eighteen years of age, the person's license or operating
28 privilege will be revoked by the department for one year or
29 until the person's eighteenth birthday, whichever is longer,
30 without eligibility for a temporary restricted license. If
31 the person refuses to submit to the test and is at least
32 eighteen years of age but less than twenty-one years of age,
33 the person's motor vehicle license or operating privilege will
34 be revoked by the department for ninety days without
35 eligibility for a temporary restricted license.

1 2. If the person submits to the test and the results
2 indicate an alcohol concentration as defined in section 321N.1
3 of more than .02, and the person is under eighteen years of
4 age, the person's license or operating privilege will be
5 revoked by the department for one year or until the person's
6 eighteenth birthday, whichever is longer, without eligibility
7 for a temporary restricted license.

8 If the person submits to the test and the results indicate
9 an alcohol concentration as defined in section 321N.1 of more
10 than .02, and the person is at least eighteen years of age but
11 less than twenty-one years of age, the person's motor vehicle
12 license or operating privilege will be revoked by the
13 department for thirty days without eligibility for a temporary
14 restricted license.

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

17 Sec. 8. NEW SECTION. 321N.6 REFUSAL TO SUBMIT --
18 REVOCATION.

19 If a person who is under eighteen years of age refuses to
20 submit to the chemical testing, a test shall not be given, but
21 the department, upon the receipt of the peace officer's
22 certification, subject to penalty for perjury, that the
23 officer had reasonable grounds to believe the person to have
24 been operating a motor vehicle while having an alcohol concen-
25 tration of more than .02, and that the person refused to
26 submit to the chemical testing, shall revoke the person's
27 motor vehicle license and operating privilege for a period of
28 one year or until the person's eighteenth birthday, whichever
29 is longer.

30 If a person who is at least eighteen years of age but less
31 than twenty-one years of age refuses to submit to the chemical
32 testing, a test shall not be given, but the department, upon
33 the receipt of the peace officer's certification, subject to
34 penalty for perjury, that the officer had reasonable grounds
35 to believe the person to have been operating a motor vehicle

1 while having an alcohol concentration of more than .02, and
2 that the person refused to submit to the chemical testing,
3 shall revoke the person's motor vehicle license and operating
4 privilege for a period of ninety days.

5 The effective date of revocation shall be twenty days after
6 receipt of notice of revocation to the person by certified
7 mail or, on behalf of the department, a peace officer offering
8 or directing the administration of a chemical test may serve
9 immediate notice of intention to revoke and of revocation on a
10 person who refuses to permit chemical testing. If the peace
11 officer serves that immediate notice, the peace officer shall
12 take the Iowa license or permit of the driver, if any, and
13 issue a temporary license effective for only twenty days. The
14 peace officer shall immediately send the person's license to
15 the department along with the officer's certificate indicating
16 the person's refusal to submit to chemical testing.

17 Sec. 9. NEW SECTION. 321N.7 TAKING SAMPLE FOR TEST.

18 Only a licensed physician, licensed physician assistant as
19 defined in section 148C.1, medical technologist, or registered
20 nurse, acting at the request of a peace officer, may withdraw
21 a specimen of blood for the purpose of determining the alcohol
22 concentration. However, any peace officer, using devices and
23 methods approved by the commissioner of public safety, may
24 take a specimen of a person's breath or urine for the purpose
25 of determining the alcohol concentration. Only new equipment
26 kept under strictly sanitary and sterile conditions shall be
27 used for drawing blood.

28 The person may have an independent chemical test or tests
29 administered at the person's own expense in addition to any
30 administered at the direction of a peace officer. The failure
31 or inability of the person to obtain an independent chemical
32 test or tests does not preclude the admission of evidence of
33 the results of the test or tests administered at the direction
34 of the peace officer. Upon the request of the person who is
35 tested, the results of the test or tests administered at the

1 direction of the peace officer shall be made available to the
2 person.

3 Sec. 10. NEW SECTION. 321N.8 REVOCATION BASED ON TEST
4 RESULTS.

5 Upon certification, subject to penalty for perjury, by the
6 peace officer that there existed reasonable grounds to believe
7 that the person had been operating a motor vehicle while
8 having an alcohol concentration of more than .02, and that the
9 person submitted to chemical testing and the test results
10 indicated an alcohol concentration of more than .02, the
11 department shall revoke the person's motor vehicle license or
12 operating privilege for one year or until the person's
13 eighteenth birthday, whichever is longer, if the person is
14 less than eighteen years of age, or for a period of thirty
15 days if the person is at least eighteen years of age but less
16 than twenty-one years of age.

17 The effective date of the revocation shall be twenty days
18 after the receipt of notice of revocation to the person by
19 certified mail. The peace officer who requested or directed
20 the administration of the chemical test may, on behalf of the
21 department, serve immediate notice of revocation on a person
22 whose test results indicated an alcohol concentration of more
23 than .02. If the peace officer serves that immediate notice,
24 the peace officer shall take the person's Iowa license or
25 permit, if any, and issue a temporary license valid only for
26 twenty days. The peace officer shall immediately send the
27 person's motor vehicle license to the department along with
28 the officer's certificate indicating that the test results
29 indicated an alcohol concentration of more than .02.

30 The results of a chemical test shall not be used as the
31 basis for a revocation of a person's motor vehicle license or
32 operating privilege if the alcohol concentration indicated by
33 the chemical test minus the established margin of error
34 inherent in the device or method used to conduct the chemical
35 test does not equal an alcohol concentration of more than .02.

1 Sec. 11. NEW SECTION. 321N.9 HEARING ON REVOCATION --
2 APPEAL.

3 1. Notice of revocation of a person's motor vehicle
4 license or operating privilege served pursuant to section
5 321N.6 or 321N.8 shall include a form accompanied by a
6 preaddressed envelope on which the person served may indicate
7 by a checkmark if the person wishes to contest the revocation.
8 The form shall clearly state on its face that the form must be
9 completed and returned within thirty days of receipt or the
10 person's right to a hearing to contest the revocation is
11 foreclosed. The form shall also be accompanied by a statement
12 of the operation of and the person's rights under this
13 chapter.

14 2. The department shall grant the person an opportunity to
15 be heard within forty-five days of receipt of a request for a
16 hearing if the request is made not later than thirty days
17 after receipt of notice of revocation served pursuant to
18 section 321N.6 or 321N.8. The hearing shall be before the
19 department in the county where the alleged events occurred,
20 unless the director and the person agree that the hearing may
21 be held in some other county, or the hearing may be held by
22 telephone conference at the discretion of the agency
23 conducting the hearing. The hearing may be recorded and its
24 scope shall be limited to the issues of whether a peace
25 officer had reasonable grounds to believe that the person was
26 operating a motor vehicle while having an alcohol
27 concentration of more than .02 and either of the following:

28 a. Whether the person refused to submit to the test or
29 tests.

30 b. Whether a test was administered and the test results
31 indicated an alcohol concentration of more than .02.

32 3. After the hearing the department shall order that the
33 revocation be either rescinded or sustained. Upon receipt of
34 the decision of the department to sustain a revocation, the
35 person contesting the revocation has ten days to file a

1 request for review of the decision by the director. The
2 director or the director's designee shall review the decision
3 within fifteen days and shall either rescind or sustain the
4 revocation or order a new hearing. If the director orders a
5 new hearing, the department shall grant the person a new
6 hearing within thirty days of the director's order.

7 Sec. 12. NEW SECTION. 321N.10 JUDICIAL REVIEW.

8 Judicial review of an action of the department may be
9 sought in accordance with chapter 17A. Notwithstanding the
10 terms of the Iowa administrative procedure Act, chapter 17A, a
11 petition for judicial review may be filed in the district
12 court in the county where the alleged events occurred or in
13 the county in which the administrative hearing was held.

14 Sec. 13. NEW SECTION. 321N.11 EVIDENCE IN ANY ACTION.

15 Upon the trial of a civil or criminal action or proceeding
16 arising out of acts alleged to have been committed by a person
17 while operating a motor vehicle while having an alcohol
18 concentration of more than .02, evidence of the alcohol
19 concentration in the person's body substances at the time of
20 the act alleged as shown by a chemical analysis of the
21 person's blood, breath, or urine is admissible. If it is
22 established at trial that an analysis of a breath specimen was
23 performed by a certified operator using a device and methods
24 approved by the commissioner of public safety, no further
25 foundation is necessary for introduction of the evidence.

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

28 If a person refuses to submit to a chemical test, proof of
29 refusal is admissible in any civil or criminal action or
30 proceeding arising out of acts alleged to have been committed
31 while the person was operating a motor vehicle while having an
32 alcohol concentration of more than .02.

33 Sec. 15. NEW SECTION. 321N.13 CIVIL PENALTY -- SEPARATE
34 FUND -- REINSTATEMENT.

35 When the department revokes a person's motor vehicle

1 license or nonresident operating privilege under this chapter,
2 the department shall assess the person a civil penalty of one
3 hundred dollars. The money collected by the department under
4 this section shall be transmitted to the treasurer of state
5 who shall deposit the money in a separate fund dedicated to
6 and used for the purposes of chapter 912 and section 709.10.
7 A motor vehicle license or nonresident operating privilege
8 shall not be reinstated until the civil penalty has been paid.

9 Sec. 16. NEW SECTION. 321N.14 OTHER EVIDENCE.

10 This chapter does not limit the introduction of any
11 competent evidence bearing on the question of whether a person
12 was under the influence of an alcoholic beverage, including
13 the results of chemical tests of specimens of blood, breath or
14 urine obtained more than two hours after the person was
15 operating a motor vehicle.

16 Sec. 17. NEW SECTION. 321N.15 INFORMATION RELAYED TO
17 OTHER STATES.

18 When it has been finally determined under this chapter that
19 a nonresident's privilege to operate a motor vehicle in this
20 state has been revoked or denied, the department shall give
21 information in writing of the action taken to the official in
22 charge of traffic control or public safety of the state of the
23 person's residence and of any state in which the person has a
24 license.

25 Sec. 18. NEW SECTION. 321N.16 TEMPORARY RESTRICTED
26 LICENSE PROHIBITED.

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

30 Sec. 19. NEW SECTION. 321N.17 DRIVING WHILE LICENSE
31 DENIED OR REVOKED.

32 A person whose motor vehicle license or nonresident
33 operating privilege has been denied or revoked as provided in
34 this chapter and who drives a motor vehicle upon the highways
35 of this state while the license or privilege is denied or

1 revoked commits a serious misdemeanor. The department, upon
2 receiving the record of the conviction of a person under this
3 section upon a charge of driving a motor vehicle while the
4 license of the person was revoked or denied, shall extend the
5 period of revocation or denial for an additional like period,
6 and the department shall not issue a new license during the
7 additional period.

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 .02 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 .02, the
26 person's motor vehicle license, or operating privilege shall
27 be revoked for one year or until the person's eighteenth
28 birthday, whichever is longer, if the person is under age 18,
29 or for a period of 30 days if the person is at least 18 but
30 less than 21 years old.

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

33
34
35