

MAR 8 1999

JUDICIARY

HOUSE FILE

529

BY DOTZLER

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to drivers under the age of twenty-one who, after  
2 ingesting a legal substance, are apprehended for driving with  
3 a blood alcohol concentration level above the statutory limit.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 529

1 Section 1. Section 321J.2A, Code 1999, is amended to read  
2 as follows:

3 321J.2A PERSONS UNDER THE AGE OF TWENTY-ONE.

4 1. A person who is under the age of twenty-one shall not  
5 operate a motor vehicle while having an alcohol concentration,  
6 as defined under section 321J.1, of .02 or more.

7 2. The driver's license or nonresident operating privilege  
8 of a person who is under the age of twenty-one and who  
9 operates a motor vehicle while having an alcohol concentration  
10 of .02 or more shall be revoked by the department for the  
11 period of time specified under section 321J.12.

12 3. A revocation under this section shall not preclude a  
13 prosecution or conviction under any applicable criminal  
14 provisions of this chapter. However, if the person is  
15 convicted of a criminal offense under section 321J.2, the  
16 revocation imposed under this section shall be superseded by  
17 any revocation imposed as a result of the conviction.

18 4. In any proceeding regarding a revocation under this  
19 section, evidence of the results of analysis of a specimen of  
20 the defendant's blood, breath, or urine is admissible upon  
21 proof of a proper foundation. The alcohol concentration  
22 established by the results of an analysis of a specimen of the  
23 defendant's blood, breath, or urine withdrawn within two hours  
24 after the defendant was driving or in physical control of a  
25 motor vehicle is presumed to be the alcohol concentration at  
26 the time of driving or being in physical control of the motor  
27 vehicle.

28 5. This section does not apply to a person operating a  
29 motor vehicle while having an alcohol concentration of .02 or  
30 more if the source of the alcohol concentration is a substance  
31 which may be legally ingested by a person who is under the age  
32 of twenty-one, including but not limited to substances such as  
33 mouthwash or prescription medication prescribed for the person  
34 and taken under the prescription and in accordance with the  
35 directions of a practitioner as defined in section 155A.3, or

1 dispensed by a pharmacist without a prescription pursuant to  
 2 the rules of the board of pharmacy examiners. The department,  
 3 in consultation with the board of pharmacy examiners and the  
 4 department of public safety, shall adopt administrative rules  
 5 for this exception that may include a nonexclusive list of  
 6 substances that may produce such an effect.

7 | a. The exception authorized by this subsection may be  
 8 applied by the apprehending officer at the time of  
 9 apprehension, based on substantial evidence, or may be  
 10 asserted as an affirmative defense in any proceeding related  
 11 to a license revocation under this section.

12 | b. This subsection does not authorize a person to drive  
 13 while under the influence of a legal substance which impairs  
 14 the person's ability to operate a motor vehicle, or exempt a  
 15 person from being charged with operating while intoxicated  
 16 under section 321J.2.

17 EXPLANATION

18 This bill provides that a person under the age of 21 who  
 19 drives in violation of the .02 blood alcohol concentration  
 20 (BAC) level prohibited by Code section 321J.2A does not  
 21 violate the statute when the BAC level is caused by a legal  
 22 substance such as mouthwash or prescription medication. The  
 23 exception may be applied by an apprehending officer, or may be  
 24 asserted as an affirmative defense in license revocation  
 25 proceedings under the section.

26 The amendment directs the state department of  
 27 transportation, in consultation with the board of pharmacy  
 28 examiners and department of public safety, to adopt rules  
 29 related to the exception, including a nonexclusive list of  
 30 substances known to produce such an effect.

31 The exception does prohibit prosecution under Code section  
 32 321J.2 for driving while impaired.

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