

**Senate Study Bill 3177 - Introduced**

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE  
ON JUDICIARY BILL BY  
CHAIRPERSON HOGG)

**A BILL FOR**

1 An Act relating to the testing of a person's blood, breath, or  
2 urine in an operating-while-intoxicated case.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 321J.2, subsection 11, Code 2014, is  
2 amended to read as follows:

3 ~~11. a. This section does not apply to a person operating~~  
4 ~~a motor vehicle while under the influence of a drug if the~~  
5 ~~substance~~ When charged with a violation of subsection 1,  
6 paragraph "a", a person who has consented to testing in  
7 accordance with section 321J.6 may assert, as an affirmative  
8 defense, that the drug that caused the intoxication was  
9 prescribed for the person and was taken under the prescription  
10 and in accordance with the directions of a medical practitioner  
11 as defined in chapter 155A or if that the substance drug was  
12 dispensed by a pharmacist without a prescription pursuant to  
13 the rules of the board of pharmacy, if there is no evidence  
14 of the consumption of alcohol and the medical practitioner  
15 ~~or pharmacist had not directed the person to refrain from~~  
16 ~~operating a motor vehicle~~ the written information or labeling  
17 directions provided by the pharmacy do not caution the person  
18 that the drug could adversely affect the person's ability to  
19 safely operate a motor vehicle.

20 *b.* When charged with a violation of subsection 1, paragraph  
21 "c", a person may assert, as an affirmative defense, that  
22 the controlled substance present in the person's blood or  
23 urine was prescribed or dispensed for the person and was taken  
24 in accordance with the directions of a practitioner and the  
25 labeling directions of the pharmacy, as that person and place  
26 of business are defined in section 155A.3.

27 *c.* (1) A person asserting an affirmative defense pursuant  
28 to this subsection shall provide notice to the state not  
29 later than forty days after arraignment. At the time notice  
30 is provided, the person shall provide a list of witnesses  
31 and shall allow the state to inspect and copy any records or  
32 statements upon which the witnesses will rely in testifying.

33 (2) Failure to comply with the requirements of this lettered  
34 paragraph "c" bars introduction of any evidence of impairment  
35 caused by a prescription drug or any evidence of the presence

1 of a controlled substance in a prescribed drug, except the  
2 testimony of the person, without leave of the court for good  
3 cause shown.

4 d. A person asserting an affirmative defense directly  
5 relating to the person's prescription or prescriptions waives  
6 all of the following:

7 (1) The confidentiality privilege pursuant to section  
8 622.10.

9 (2) Any privilege or nondisclosure requirement under state  
10 or federal privacy laws.

11 Sec. 2. Section 321J.8, subsection 1, paragraph a, Code  
12 2014, is amended to read as follows:

13 a. If the person refuses to submit to the test and the  
14 person has had no previous conviction or revocation under this  
15 chapter and has not been involved in an accident resulting  
16 in personal injury or property damage, the person's driver's  
17 license or nonresident operating privilege will be revoked by  
18 the department as required by and for the applicable period  
19 specified under section 321J.9.

20 Sec. 3. Section 321J.8, subsection 1, Code 2014, is amended  
21 by adding the following new paragraphs:

22 NEW PARAGRAPH. *ob.* If the person refuses to submit to  
23 the test and the person has had a previous conviction or  
24 revocation under this chapter, the person's driver's license  
25 or nonresident operating privilege will be revoked by the  
26 department as required by and for the applicable period  
27 specified under section 321J.9. The person shall also be  
28 advised that notwithstanding the person's refusal, the peace  
29 officer may apply to a magistrate to secure a search warrant to  
30 compel withdrawal of a specimen of the person's blood or urine  
31 or both.

32 NEW PARAGRAPH. *oob.* If the person refuses to submit to the  
33 test, the person shall be prohibited from presenting medical  
34 or pharmaceutical evidence that the violation of section  
35 321J.2 was caused by a prescription or a controlled substance

1 dispensed by a pharmacy.

2 Sec. 4. Section 321J.9, subsection 1, Code 2014, is amended  
3 to read as follows:

4 1. If a person refuses to submit to the chemical  
5 testing and the person has not had a previous conviction or  
6 revocation under this chapter, a test shall not be given,  
7 but the department, upon the receipt of the peace officer's  
8 certification, subject to penalty for perjury, that the officer  
9 had reasonable grounds to believe the person to have been  
10 operating a motor vehicle in violation of section 321J.2 or  
11 321J.2A, that specified conditions existed for chemical testing  
12 pursuant to section 321J.6, and that the person refused to  
13 submit to the chemical testing, shall revoke the person's  
14 driver's license and any nonresident operating privilege for  
15 ~~the following periods of time:~~

16 ~~a. One one year if the person has no previous revocation~~  
17 ~~under this chapter; and~~

18 ~~b. Two years if the person has had a previous revocation~~  
19 ~~under this chapter.~~

20 Sec. 5. Section 321J.9, Code 2014, is amended by adding the  
21 following new subsection:

22 NEW SUBSECTION. 1A. If a person refuses to submit to the  
23 chemical testing and the person has had a previous conviction  
24 or revocation under this chapter, a test may be compelled  
25 pursuant to section 321J.10 and the department, upon the  
26 receipt of the peace officer's certification, subject to  
27 penalty for perjury, that the officer had reasonable grounds  
28 to believe the person to have been operating a motor vehicle  
29 in violation of section 321J.2 or 321J.2A, that specified  
30 conditions existed for chemical testing pursuant to section  
31 321J.6, and that the person refused to submit to the chemical  
32 testing, shall revoke the person's driver's license and any  
33 nonresident operating privilege for two years. This subsection  
34 shall apply regardless of whether a test was compelled pursuant  
35 to section 321J.10.

1 Sec. 6. Section 321J.9, subsection 2, paragraph a, Code  
2 2014, is amended to read as follows:

3 a. A person whose driver's license or nonresident operating  
4 privileges are revoked under subsection 1 shall not be eligible  
5 for a temporary restricted license for at least ninety days  
6 after the effective date of the revocation. A temporary  
7 restricted license issued to a person whose driver's license or  
8 nonresident driving privilege has been revoked under subsection  
9 ~~1, paragraph "b"~~ 1A, shall be issued in accordance with section  
10 321J.20, subsection 2.

11 Sec. 7. Section 321J.10, subsections 1, 4, 7, and 9, Code  
12 2014, are amended to read as follows:

13 1. Refusal to consent to a test under section 321J.6 does  
14 not prohibit the withdrawal of a specimen for chemical testing  
15 pursuant to a search warrant issued in the investigation of a  
16 suspected violation of section 321J.2, subsection 2, paragraph  
17 "b" or "c" or section 707.5 or 707.6A ~~if all of the following~~  
18 ~~grounds exist:~~

19 ~~a. A traffic accident has resulted in a death or personal~~  
20 ~~injury reasonably likely to cause death.~~

21 ~~b. There are reasonable grounds to believe that one or more~~  
22 ~~of the persons whose driving may have been the proximate cause~~  
23 ~~of the accident was violating section 321J.2 at the time of the~~  
24 ~~accident.~~

25 4. a. Search warrants issued under this section shall  
26 authorize and direct peace officers to secure the withdrawal  
27 of blood or urine specimens by medical personnel under section  
28 321J.11. Reasonable care shall be exercised to ensure the  
29 health and safety of the persons from whom specimens are  
30 withdrawn in execution of the warrants.

31 b. If a person from whom a specimen is to be withdrawn  
32 objects to the withdrawal of blood, ~~the warrant may be executed~~  
33 ~~as follows:~~

34 ~~(1) If~~ but the person is capable of giving a specimen of  
35 breath, and a direct breath testing instrument is readily

1 available, the warrant may be executed by the withdrawal of  
2 a specimen of breath for chemical testing, unless the peace  
3 officer has reasonable grounds to believe that the person was  
4 under the influence of a controlled substance, a drug other  
5 than alcohol, or a combination of alcohol and another drug.

6 (2) c. If the testimony in support of the warrant sets  
7 forth facts and information that the peace officer has  
8 reasonable grounds to believe that the person was under the  
9 influence of a controlled substance, a drug other than alcohol,  
10 or a combination of alcohol and another drug, a urine sample  
11 ~~shall~~ may be collected in lieu of or in addition to a blood  
12 sample, ~~if the person is capable of giving a urine sample and~~  
13 ~~the sample can be collected without the need to physically~~  
14 ~~compel the execution of the warrant.~~ If the person from whom a  
15 specimen of urine is to be collected objects to the withdrawal  
16 of a urine sample, a urine sample may be taken if the person  
17 is capable of giving a urine sample and the sample can be  
18 collected without the need to physically compel withdrawal of  
19 the sample.

20 7. Specimens obtained pursuant to warrants issued under  
21 this section or under chapter 808 in the investigation of a  
22 suspected violation of section 321J.2, subsection 2, paragraph  
23 "b" or "c", or section 707.5 or 707.6A are not subject to  
24 disposition under section 808.9 or chapter 809 or 809A.

25 9. Medical personnel who use reasonable care and accepted  
26 medical practices in withdrawing blood or urine specimens are  
27 immune from liability for their actions in complying with  
28 requests made of them pursuant to search warrants or pursuant  
29 to section 321J.11.

30 Sec. 8. Section 321J.10, subsection 3, paragraph c, Code  
31 2014, is amended to read as follows:

32 c. The oral application testimony shall set forth facts and  
33 information tending to establish the existence of the grounds  
34 for the warrant ~~and shall describe with a reasonable degree of~~  
35 ~~specificity the person or persons whose driving is believed~~

1 ~~to have been the proximate cause of the accident~~ and from  
2 whom a specimen is to be withdrawn and the location where the  
3 withdrawal of the specimen or specimens is to take place.

4 Sec. 9. Section 321J.10, Code 2014, is amended by adding the  
5 following new subsection:

6 NEW SUBSECTION. 10. A constitutionally valid search  
7 warrant issued under subsection 3 or chapter 808 shall not  
8 be held invalid solely because of an error of fact made in  
9 good faith as to whether the grounds specified in subsection 1  
10 exist.

11 Sec. 10. Section 321J.10A, Code 2014, is amended to read as  
12 follows:

13 **321J.10A Blood, breath, or urine specimen withdrawal without**  
14 **a warrant.**

15 1. Notwithstanding section 321J.10, if a person is under  
16 arrest for an offense arising out of acts alleged to have  
17 been committed while the person was operating a motor vehicle  
18 in violation of section 321J.2 or 321J.2A, and that arrest  
19 results from an accident that causes a death or personal injury  
20 reasonably likely to cause death, a chemical test of blood or  
21 urine may be administered without the consent of the person  
22 arrested to determine the amount of alcohol or a controlled  
23 substance in that person's blood or urine if all of the  
24 following circumstances exist:

25 a. The peace officer reasonably believes the blood ~~drawn~~ or  
26 urine sample will produce evidence of intoxication.

27 b. The method used to take the blood or urine sample is  
28 reasonable and performed in a reasonable manner by medical  
29 personnel under section 321J.11.

30 c. The peace officer reasonably believes the officer is  
31 confronted with an emergency situation in which the delay  
32 necessary to obtain a warrant under section 321J.10 threatens  
33 the destruction of the evidence.

34 2. If the person from whom a specimen ~~of blood~~ is to be  
35 withdrawn objects to the withdrawal, a breath ~~or urine~~ sample

1 may be taken under the following circumstances:

2 ~~a. If the person is capable of giving a specimen of breath,~~  
3 ~~and a direct breath testing instrument is readily available,~~  
4 ~~the withdrawal of a specimen of the person's breath may be~~  
5 ~~taken for chemical testing, unless the peace officer has~~  
6 ~~reasonable grounds to believe that the person was under the~~  
7 ~~influence of a controlled substance, a drug other than alcohol,~~  
8 ~~or a combination of alcohol and another drug~~ if the peace  
9 officer has reasonable grounds to believe that the person's  
10 intoxication or impairment is due to alcohol only, the person  
11 is capable of giving a breath specimen, and an evidential  
12 breath testing device is readily available.

13 ~~b. 3.~~ If the peace officer has reasonable grounds to  
14 believe that the person was under the influence of a controlled  
15 substance, a drug other than alcohol, or a combination of  
16 alcohol and another drug, and the person from whom the specimen  
17 of urine is to be collected objects to the withdrawal of a  
18 urine sample shall be collected in lieu of a blood sample, a  
19 sample may be taken if the person is capable of giving a urine  
20 sample and the sample can be collected without the need to  
21 physically compel withdrawal of the sample.

22 Sec. 11. Section 321J.11, unnumbered paragraph 1, Code  
23 2014, is amended to read as follows:

24 Only a licensed physician, licensed physician assistant as  
25 defined in section 148C.1, phlebotomist, medical technologist,  
26 or registered nurse, acting at the request of a peace officer,  
27 may withdraw a specimen of blood or urine for the purpose  
28 of determining the alcohol concentration or the presence of  
29 a controlled substance or other drugs. However, any peace  
30 officer, using devices and methods approved by the commissioner  
31 of public safety, may take a specimen of a person's breath  
32 or collect a specimen of a person's urine for the purpose of  
33 determining the alcohol concentration, or may ~~take~~ collect a  
34 specimen of a person's urine for the purpose of determining the  
35 presence of a controlled substance or other drugs. Only new



1 equipment kept under strictly sanitary and sterile conditions  
2 shall be used for drawing blood or for withdrawing urine. If  
3 the officer determines that urine should be collected from a  
4 person receiving medical attention and the urine is collected  
5 through the use of a catheter, a peace officer may collect a  
6 sample of the person's urine from the catheter bag and the  
7 test results from such a sample are admissible notwithstanding  
8 any claim of privilege under section 622.10, any privilege  
9 under federal privacy laws, or any nondisclosure requirements  
10 asserted by the person or on the person's behalf.

11 Sec. 12. Section 321J.16, Code 2014, is amended to read as  
12 follows:

13 **321J.16 Proof of refusal admissible.**

14 If a person refuses to submit to a chemical test, proof  
15 of refusal is admissible in any civil or criminal action or  
16 proceeding arising out of acts alleged to have been committed  
17 while the person was operating a motor vehicle in violation  
18 of section 321J.2 or 321J.2A. If, following a refusal, a  
19 specimen is collected for testing pursuant to section 321J.10  
20 or 321J.10A or chapter 808, the results of the testing are also  
21 admissible.

22 Sec. 13. Section 321J.20, subsection 1, paragraph b, Code  
23 2014, is amended to read as follows:

24 *b.* A temporary restricted license may be issued under this  
25 subsection if the person's noncommercial driver's license is  
26 revoked for two years under section 321J.4, subsection 2, or  
27 section 321J.9, subsection 1, ~~paragraph "b"~~ 1A, and the first  
28 three hundred sixty-five days of the revocation have expired.

29

EXPLANATION

30 The inclusion of this explanation does not constitute agreement with  
31 the explanation's substance by the members of the general assembly.

32 This bill relates to operating-while-intoxicated cases.

33 Under current law, a person's use of a valid drug  
34 prescription taken in accordance with the directions of  
35 a medical practitioner or pharmacist is a defense to an

1 operating-while-intoxicated (OWI) charge under Code section  
2 321J.2 if there is no evidence of alcohol consumption and the  
3 medical practitioner or pharmacist did not direct the person  
4 to refrain from operating a motor vehicle. The bill amends  
5 this law to provide that a person who is charged with an OWI  
6 violation while under the influence of an alcoholic beverage  
7 or other drug or a combination of both who has consented  
8 to testing in accordance with Code section 321J.6 (implied  
9 consent) may assert, as an affirmative defense, that the drug  
10 that caused the intoxication was prescribed or dispensed for  
11 the person and was taken in accordance with the directions of  
12 a practitioner or that the drug was dispensed by a pharmacist  
13 without a prescription, if there is no evidence of alcohol  
14 consumption and the pharmacy information fails to caution the  
15 person about the adverse effects of the drug on driving.

16 Current law also provides that a person charged with an  
17 OWI offense based upon the presence of a controlled substance  
18 in the person's blood or urine may assert, as an affirmative  
19 defense, that the controlled substance was prescribed or  
20 dispensed for the person and was taken in accordance with the  
21 directions of a practitioner and the labeling directions of the  
22 pharmacy.

23 The bill provides that a person asserting an affirmative  
24 prescription drug defense is required to provide notice to  
25 the state not later than 40 days after arraignment. At the  
26 time notice is provided, the person is required to provide a  
27 list of witnesses and shall allow the state to inspect and  
28 copy any records or statements upon which the witnesses will  
29 rely in testifying. Failure to comply with these requirements  
30 bars introduction of any evidence of impairment caused by  
31 a prescription drug or any evidence of the presence of a  
32 controlled substance in a prescribed drug, except the testimony  
33 of the person, without leave of the court for good cause shown.

34 The bill provides that a person asserting an affirmative  
35 defense directly relating to the person's prescription or

1 prescriptions waives the confidentiality privilege pursuant to  
2 Code section 622.10 (confidential professional communications)  
3 and any privilege or nondisclosure requirement under state or  
4 federal privacy laws.

5 CODE SECTION 321J.10 (TESTS PURSUANT TO WARRANTS). Under  
6 current law, refusal to consent to a test under Code section  
7 321J.6 (implied consent) does not prohibit the withdrawal  
8 of a specimen of blood for chemical testing pursuant to a  
9 search warrant issued in the investigation of a suspected  
10 involuntary manslaughter (Code section 707.5) or homicide or  
11 serious injury by vehicle (Code section 707.6A) if a traffic  
12 accident has resulted in a death or personal injury reasonably  
13 likely to cause death and there are reasonable grounds to  
14 believe that one or more of the persons whose driving may have  
15 been the proximate cause of the accident was violating Code  
16 section 321J.2 at the time of the accident. A urine sample  
17 may be collected in lieu of a blood sample under certain  
18 circumstances.

19 The bill provides that all second and subsequent Code  
20 chapter 321J offenders can be forced to submit to blood or  
21 urine testing pursuant to a search warrant and eliminates the  
22 requirement that there must be reasonable grounds to believe  
23 the person was violating Code section 321J.2 and an accident  
24 occurred resulting in death or personal injury reasonably  
25 likely to cause death, in addition to cases involving  
26 involuntary manslaughter or homicide or serious injury by  
27 vehicle. An officer may take a urine sample in lieu of or in  
28 addition to a blood sample if the person is capable of giving a  
29 urine sample and the sample can be collected without the need  
30 to physically withdraw the sample. If the person from whom a  
31 specimen of urine is to be collected objects to the withdrawal,  
32 the person may voluntarily provide a urine sample if the person  
33 is capable of giving a urine sample and the sample can be  
34 collected without the need to physically compel withdrawal of  
35 the sample.

1 The bill provides that a constitutionally valid search  
2 warrant shall not be held invalid solely because of an error  
3 of fact made in good faith as to whether the grounds specified  
4 in the bill exist.

5 CODE SECTION 321J.10A (BLOOD WITHDRAWAL WITHOUT A WARRANT  
6 IN EMERGENCY). Current law provides that if a person is under  
7 arrest and the arrest resulted from an accident that caused  
8 a death or personal injury reasonably likely to cause death,  
9 a peace officer may compel a blood test without the consent  
10 of the suspect and without a warrant if the peace officer  
11 reasonably believes the officer is confronted with an emergency  
12 situation in which a delay necessary to obtain a warrant  
13 threatens the destruction of evidence. A breath or urine  
14 sample may be collected under certain circumstances.

15 The bill provides that if the person from whom a specimen is  
16 to be withdrawn objects to the withdrawal, a breath sample may  
17 be taken if the peace officer has reasonable grounds to believe  
18 that the person's intoxication or impairment is due to alcohol  
19 only, the person is capable of giving a breath specimen, and an  
20 evidential breath testing device is readily available. If the  
21 peace officer has reasonable grounds to believe that the person  
22 was under the influence of a controlled substance, a drug other  
23 than alcohol, or a combination of alcohol and another drug, and  
24 the person from whom the specimen of urine is to be withdrawn  
25 objects to the withdrawal of a urine sample, a urine sample  
26 may be taken if the person is capable of giving a urine sample  
27 and the sample can be collected without the need to physically  
28 withdraw the sample.

29 CODE SECTION 321J.11 (TAKING SAMPLE FOR TEST). The bill  
30 provides that a urine sample as an alternate to a blood  
31 sample may be taken for the purpose of determining the alcohol  
32 concentration or the presence of a controlled substance or  
33 other drugs. A phlebotomist may take a sample in addition  
34 to other specified medical personnel for the purpose of  
35 determining the alcohol concentration or the presence of a

1 controlled substance or other drugs. In addition, if the  
2 peace officer determines that urine should be collected from a  
3 person receiving medical attention and the urine is collected  
4 through the use of a catheter, a peace officer may collect a  
5 sample of the person's urine from the catheter bag, and the  
6 test results from such a sample are admissible notwithstanding  
7 any claim of privilege under Code section 622.10, any privilege  
8 under federal privacy laws, or any nondisclosure requirements  
9 asserted by the person or on the person's behalf.

10 CODE SECTION 321J.16 (ADMISSIBILITY OF PROOF OF REFUSAL).

11 Current law provides that if a person refuses to submit  
12 to a chemical test, proof of that refusal is admissible in  
13 any operating-while-intoxicated civil or criminal action or  
14 proceeding. The bill provides that if, following a refusal,  
15 a specimen is collected for testing, regardless of whether  
16 a warrant was issued, the results of the testing are also  
17 admissible.

18 CONFORMING CODE CHANGES. The bill makes conforming Code  
19 changes to Code section 321J.8 (peace officer implied consent  
20 advisory given to a person who has refused to submit to a  
21 chemical test), Code section 321J.9 (license revocations due  
22 to refusal to submit to testing), and Code section 321J.20  
23 (temporary restricted licenses and ignition interlock devices).