

LEGISLATIVE BILL 1095

Approved by the Governor March 21, 1972

Introduced by Wally Barnett, Jr., 26th District

AN ACT to amend sections 39-727, 39-727.03, 39-727.04, and 39-727.15, Revised Statutes Supplement, 1971, relating to highways; to provide for breath tests of drivers as prescribed; to provide penalties; to provide exceptions; to provide who may administer certain tests; to provide for administrative revocation of licenses and nonresident privileges for refusal to submit to tests; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 39-727, Revised Statutes Supplement, 1971, be amended to read as follows:

39-727. It shall be unlawful for any person to operate or be in the actual physical control of any motor vehicle while under the influence of alcoholic liquor or of any drug or when that person has ten-hundredths of one per cent or more by weight of alcohol in his blood body fluid as shown by chemical analysis of his blood, breath, or urine. Any person who shall operate or be in the actual physical control of any motor vehicle while under the influence of alcoholic liquor or of any drug or while having ten-hundredths of one per cent by weight of alcohol in his blood body fluid as shown by chemical analysis of his blood, breath, or urine shall be deemed guilty of a crime and, upon conviction thereof, shall be punished as follows: (1) If such conviction is for a first offense, such person shall be imprisoned in the county jail for not more than three months, or shall be fined one hundred dollars, ~~or both such a fine and imprisonment~~ or be both so fined and imprisoned, and the court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle for any purpose for a period of six months from the date of his final discharge from the county jail, or the date of payment or satisfaction of such fine, whichever is the later, and shall order that the operator's license of such person be revoked for a like period; (2) if such conviction is for a second offense such person shall be imprisoned in the county jail for not less than five days nor more than three months, and shall be fined the sum of three hundred dollars, and the court shall, as part of the judgment of conviction, order such person not to

drive any motor vehicle for any purpose for a period of one year from the date of his final discharge from the county jail, or the date of payment or satisfaction of such fine, whichever is the later, and shall order that the operator's license of such person be revoked for a like period, and if the motor vehicle which such person was operating or was actually physically controlling, while under the influence of alcoholic liquor or any drug, is registered in the name of such person, the motor vehicle shall be impounded in a reputable garage by the court for a period of not less than two months nor greater than one year at the expense and risk of the owner thereof; Provided, any motor vehicle so impounded shall be released to the holder of a bona fide lien thereon, executed prior to such impounding, when possession of such motor vehicle is requested in writing by such lienholder for the purpose of foreclosing and satisfying his lien thereon; and (3) if such conviction is for a third offense, or subsequent offense thereafter, such person shall be imprisoned in the Nebraska Penal and Correctional Complex for not less than one year nor more than three years and the court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle for a period of one year from the date of his final discharge from the Nebraska Penal and Correctional Complex, and shall order that the operator's license of such person be revoked for a like period. Such penalties as provided for in subdivisions (2) and (3) of this section shall be applicable regardless of whether the prior conviction or convictions was or were based upon violation of state-law this section or upon violation of a city or village ordinance enacted pursuant to this section, or both. Any city or village may enact ordinances in conformance with this section and section 39-727.03. Upon conviction of any person of a violation of such a city or village ordinance, the provisions of this section with respect to the license of such person to operate a motor vehicle shall be applicable the same as though it were a violation of this section.

Sec. 2. That section 39-727.03, Revised Statutes Supplement, 1971, be amended to read as follows:

39-727.03. (1) Any person who operates or has in his actual physical control a motor vehicle upon a public highway in this state shall be deemed to have given his consent to submit to a chemical test of his blood, urine, or breath, for the purpose of determining the amount of alcoholic content in his body fluid.

(2) Any law enforcement officer who has been duly authorized to make arrests for violations of traffic laws of this state or of ordinances of any city or village may

require any person arrested for any offense arising out of acts alleged to have been committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic liquor to submit to a chemical test of his blood, breath, or urine for the purpose of determining the alcoholic content of his body fluid, when the officer has reasonable grounds to believe that such person was driving or was in the actual physical control of a motor vehicle upon a public highway in this state while under the influence of alcoholic liquor.

(3) Any law enforcement officer who has been duly authorized to make arrests for violation of traffic laws of this state or ordinances of any city or village may require any such person who operates or has in his actual physical control a motor vehicle upon a public highway in this state to submit to a preliminary test of his breath for alcohol content if the officer has reasonable grounds to believe that such person has alcohol in his body, or has committed a moving traffic violation, or has been involved in a traffic accident. Any person who refuses to submit to such preliminary breath test or whose preliminary breath test results indicate an alcohol content of ten-hundredths of one per cent or more shall be placed under arrest. Any person who refuses to submit to such preliminary breath test shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars.

(4) Any person so arrested as provided in this section may, then, upon the direction of the a law enforcement officer, be required to submit to a chemical test of his blood, breath, or urine for a determination of the alcohol content. The--law--enforcement--officer requiring such breath, blood, or urine tests--sh--advise such persons of the consequences of refusing to submit to such tests.--Any person who refuses to submit to a breath test required pursuant to this section shall be guilty of a misdemeanor and,--upon--conviction--thereof,--shall--be punished by a fine of not less than fifty dollars nor more than one hundred dollars. Any person who refuses to submit to a chemical blood, breath, or urine test required pursuant to this section shall be guilty of a crime and, upon conviction thereof, shall be punished in the same manner as he would be if convicted for a violation of section 39-727 and shall be subject to the administrative revocation procedures of the Director of Motor Vehicles provided in this act.

(5) Any person who is required to submit to a preliminary breath test, or to a chemical blood, breath

or urine test pursuant to this section shall be advised of the consequences of refusing to submit to such test.

Sec. 3. That section 39-727.04, Revised Statutes Supplement, 1971, be amended to read as follows:

39-727.04. The person required to submit to The law enforcement officer who requires a chemical blood, breath, or urine test pursuant to section 39-727.03 may choose direct whether the test shall be of his blood, breath, or urine; Provided, that when the officer directs that the test shall be of a person's blood or urine, such person may choose whether the test shall be of his blood or urine. The person tested shall be permitted to have a physician of his choice evaluate his condition and perform or have performed whatever laboratory tests he deems appropriate in addition to and following the test administered at the direction of the law enforcement officer. If the officer shall refuse to permit such additional test to be taken, then the original test shall not be competent as evidence. Upon the request of the person tested, the results of the test taken at the direction of the law enforcement officer shall be made available to him.

Sec. 4. That section 39-727.15, Revised Statutes Supplement, 1971, be amended to read as follows:

39-727.15. Any person arrested for any offense involving the operation or actual physical control of a motor vehicle while under the influence of alcoholic liquor shall be required to submit to a chemical test of his blood, breath, or urine test as provided in section 39-727.03 without the preliminary breath test if the arresting officer does not have available the necessary equipment for administering a breath test or if the person is unconscious or is otherwise in a condition rendering him incapable of testing by a preliminary breath test. Only a physician, registered nurse, or registered laboratory technologist acting at the request of a law enforcement officer may withdraw blood for the purpose of determining the alcoholic content therein, but this limitation shall not apply to the taking of a urine or breath specimen. Any person refusing to submit to the test required by this section shall be subject to the same penalties provided for violation of section 39-727.03.

Sec. 5. If a person arrested pursuant to section 39-727.03 refuses to submit to the chemical test of blood, breath, or urine required by that section, the test shall not be given and the arresting officer shall make a sworn report to the Director of Motor Vehicles.

Such report shall state (1) that the person was validly arrested pursuant to section 39-727.03 and the reasons for such arrest, (2) that such person was requested to submit to the required test, and (3) that such person refused to submit to the required test.

Sec. 6. Upon receipt of the officer's report of such refusal, the Director of Motor Vehicles shall notify such person of a date for hearing before him as to the reasonableness of the refusal to submit to the test. The notice of hearing shall be served by the director by mailing it to such person by certified or registered mail to the last-known residence address of such person, or, if such address is unknown, to the last-known business address of such person at least ten days before the hearing. After granting the person an opportunity to be heard on such issue, if it is not shown to the director that such refusal to submit to such chemical test was reasonable, the director shall summarily revoke the motor vehicle operator's license or nonresident operating privilege of such person for a period of one year from the date of such order. For the purpose of such hearing, the director may appoint an examiner who shall have power to preside at such hearing, to administer oaths, examine witnesses and take testimony, and thereafter report the same to the director.

Sec. 7. If the Director of Motor Vehicles revokes the operator's license or the nonresident's operating privilege under the provisions of section 2 and sections 5 to 9 of this act, he shall reduce his order of revocation to writing, and shall notify the person in writing of the revocation. Such notice shall (1) set forth the period of revocation, (2) include a demand that the license be returned to the director immediately, and (3) be served by mailing it to such person by certified or registered mail to the last-known residence address of such person, or, if such address is unknown, to the last-known business address of such person. If any person shall fail to return his license to the director as demanded, the director shall forthwith direct any peace officer or authorized representative of the director to secure possession of such license and return the same to the director; Provided, that a refusal to surrender an operator's license on demand shall be unlawful and any person failing to surrender his license as required by the provisions of this section shall, upon conviction thereof, be punished by a fine of not to exceed five hundred dollars or imprisonment in the county jail not to exceed thirty days, or both such fine and imprisonment.

Sec. 8. Any person who feels himself aggrieved because of such revocation may appeal therefrom to the district court of the county where the alleged events occurred for which he was arrested, in the manner prescribed in section 60-420. Such appeal shall not suspend the order of revocation unless a stay thereof shall be allowed by a judge of such court pending a final determination of the review: Provided, if a stay shall be allowed, and the final judgment of a court finds against the person so appealing, the period of revocation shall commence at the time of final judgment of the court for the full period of the time of revocation.

Sec. 9. Any person operating a motor vehicle upon a public highway during the period for which his license was revoked under the provisions of section 2 and sections 5 to 9 of this act, or after such period of revocation but before issuance of a new license, shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished as provided in section 60-430.01.

Sec. 10. That original sections 39-727, 39-727.03, 39-727.04, and 39-727.15, Revised Statutes Supplement, 1971, are repealed.