

LEGISLATIVE BILL 872

Approved by the Governor April 13, 1992

Introduced by Hefner, 19; Hartnett, 45; Dierks, 40; Lynch, 13; Wickersham, 49; Haberman, 44; Schellpeper, 18; Peterson, 21; Baack, 47; Wehrbein, 2; Robinson, 16; Byars, 30; Conway, 17; Morrissey, 1; Pirsch, 10; Elmer, 38; Nelson, 35; Labedz, 5; Coordsen, 32; Abboud, 12; Lamb, 43

AN ACT relating to motor vehicle operation; to amend section 39-669.15, Reissue Revised Statutes of Nebraska, 1943, and sections 39-669.08, 39-669.11, 39-6,122, and 60-4,164, Revised Statutes Supplement, 1990; to authorize law enforcement officers to require persons involved in accidents to submit to chemical tests as prescribed; to authorize use of test results as evidence; to require and permit disclosure of test results; to harmonize provisions; to provide severability; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 39-669.08, Revised Statutes Supplement, 1990, be amended to read as follows:

39-669.08. (1) Any person who operates or has in his or her actual physical control a motor vehicle upon a public highway in this state shall be deemed to have given his or her consent to submit to a chemical test or tests of his or her blood, urine, or breath for the purpose of determining the amount of alcoholic content of or the presence of drugs in such blood, breath, or urine.

(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 or drugs to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the alcoholic

content of or the presence of drugs in such blood, breath, or urine 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 or drugs.

(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 person who operates or has in his or her actual physical control a motor vehicle upon a public highway in this state to submit to a preliminary test of his or her breath for alcohol content if the officer has reasonable grounds to believe that such person has alcohol in his or her body, 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 gram or more by weight of alcohol per two hundred ten liters of his or her breath shall be placed under arrest. Any person who refuses to submit to such preliminary breath test shall be guilty of a Class V misdemeanor.

(4) Any person arrested as provided in this section may, upon the direction of a law enforcement officer, be required to submit to a chemical test or tests of his or her blood, breath, or urine for a determination of the alcohol content or the presence of drugs. Any person who refuses to submit to such test or tests required pursuant to this section shall be subject to the administrative revocation procedures of the Director of Motor Vehicles provided in sections 39-669.07 to 39-669.09 and 39-669.14 to 39-669.18 and shall be guilty of a crime and, upon conviction thereof, shall be punished as follows:

(a) If such person (i) has not had a conviction under this section in the ten years prior to the date of the current conviction or (ii) has not been convicted under a city or village ordinance enacted pursuant to this section as authorized by section 39-669.07 in the ten years prior to the date of the current conviction, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle in the State of Nebraska for any purpose for a period of six months from the date ordered by the court and shall order that the operator's license of such person be revoked for a like period. Such

revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. Such revocation shall not run concurrently with any jail term imposed.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order such person not to drive any motor vehicle in the State of Nebraska for any purpose for a period of sixty days;

(b) If such person (i) has had one conviction under this section in the ten years prior to the date of the current conviction or (ii) has been convicted once under a city or village ordinance enacted pursuant to this section as authorized by section 39-669.07 in the ten years prior to the date of the current conviction, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle in the State of Nebraska for any purpose for a period of one year from the date ordered by the court and shall order that the operator's license of such person be revoked for a like period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. Such revocation shall not run concurrently with any jail term imposed.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order such person not to drive any motor vehicle in the State of Nebraska for any purpose for a period of six months from the date of the order, and such order of probation shall include as one of its conditions confinement in the city or county jail for forty-eight hours; and

(c) If such person (i) has had two or more convictions under this section in the ten years prior to the date of the current conviction, (ii) has been convicted two or more times under a city or village ordinance enacted pursuant to this section as authorized by section 39-669.07 in the ten years prior to the date of the current conviction, or (iii) has been convicted as described in subdivisions (i) and (ii) of this subdivision a total of two or more times in the ten years prior to the date of the current conviction, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle in the

State of Nebraska for any purpose for a period of fifteen years from the date ordered by the court and shall order that the operator's license of such person be revoked for a like period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. Such revocation shall not run concurrently with any jail term imposed.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order such person not to drive any motor vehicle in the State of Nebraska for any purpose for a period of one year, and such order of probation shall include as one of its conditions confinement in the city or county jail for seven days.

(5) For each conviction under this section, the court shall, as part of the judgment of conviction, make a finding on the record as to the number of the defendant's prior convictions under this section and under a city or village ordinance enacted pursuant to this section or section 39-669.07 in the ten years prior to the date of the current conviction. The defendant shall be given the opportunity to review the record of his or her prior convictions, bring mitigating facts to the attention of the court prior to sentencing, and make objections on the record regarding the validity of such prior convictions.

(6) For purposes of this section, the ten-year period shall be computed from the date of the prior offense to the date of the offense which resulted in the current conviction and the terms conviction under this section and prior conviction shall include any conviction under this section as it existed at the time of such conviction regardless of subsequent amendments to such section.

(7) Any person operating a motor vehicle on the highways or streets of this state while his or her operator's license has been revoked pursuant to subdivision (4)(c) of this section shall be guilty of a Class IV felony.

(8) Any city or village may enact ordinances in conformance with this section. Upon conviction of any person of a violation of such 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.

(9) Any person involved in a motor vehicle

accident in this state may be required to submit to a chemical test of his or her blood, breath, or urine by any law enforcement officer if the officer has reasonable grounds to believe that the person was driving or was in actual physical control of a motor vehicle on a public highway in this state while under the influence of alcoholic liquor or drugs at the time of the accident. A person involved in a motor vehicle accident subject to the implied consent law of this state shall not be deemed to have withdrawn consent to submit to a chemical test of his or her blood, breath, or urine by reason of leaving this state. If the person refuses a test under this section and leaves the state for any reason following an accident, he or she shall remain subject to subsection (4) of this section and section 39-669.16 upon return.

(9) (10) Any person who is required to submit to a preliminary breath test or to a chemical blood, breath, or urine test or tests pursuant to this section shall be advised of the consequences of refusing to submit to such test or tests. Refusal to submit to such test or tests shall be admissible in any action for a violation of section 39-669.07 or a city or village ordinance enacted pursuant to such section.

Sec. 2. That section 39-669.11, Revised Statutes Supplement, 1990, be amended to read as follows:

39-669.11. (1) Any test made under the provisions of section 39-669.08, if made in conformity with the requirements of this section, shall be competent evidence in any prosecution under a state statute or city or village ordinance involving operating a motor vehicle while under the influence of alcoholic liquor or drugs or involving driving or being in actual physical control of a motor vehicle when the concentration of alcohol in the blood, breath, or urine is in excess of allowable levels, ~~7~~ in violation of section 39-669.07 or a city or village ordinance.

(2) ~~To be considered valid, tests made under section 39-669.08 Tests to be considered valid shall be performed according to methods approved by the Department of Health and by an individual possessing a valid permit issued by such department for such purpose. The department is authorized to approve satisfactory techniques or methods and to ascertain the qualifications and competence of individuals to perform such tests and to issue permits which shall be subject to termination or revocation at the discretion of the department.~~

(3) A permit fee may be established by regulation by the department which shall not exceed the actual cost of processing the initial permit. Such fee shall be charged annually to each permit holder. The fees shall be used to defray the cost of processing and issuing the permits and other expenses incurred by the department in carrying out this section. The fee shall be remitted to the State Treasurer for credit to the Department of Health Cash Fund as a laboratory service fee.

(4) Relevant evidence shall not be excluded in any prosecution under a state statute or city or village ordinance involving operating a motor vehicle while under the influence of alcoholic liquor or drugs or involving driving or being in actual physical control of a motor vehicle when the concentration of alcohol in the blood, breath, or urine is in excess of allowable levels on the ground that the evidence existed or was obtained outside of this state.

Sec. 3. (1) If the driver of a motor vehicle involved in an accident is transported to a hospital within or outside of Nebraska and a sample of the driver's blood is withdrawn by a physician, registered nurse, qualified technician, or hospital for the purpose of medical treatment, the results of a chemical test of the sample shall be admissible in a criminal prosecution under section 39-669.07 to show the alcoholic content of or the presence of drugs or both in the blood at the time of the accident regardless of whether (a) a law enforcement officer requested the driver to submit to a test as provided in section 39-669.08 or (b) the driver had refused a chemical test.

(2) Any physician, registered nurse, qualified technician, or hospital in this state performing a chemical test to determine the alcoholic content of or the presence of drugs in such blood for the purpose of medical treatment of the driver of a vehicle involved in a motor vehicle accident shall disclose the results of the test (a) to a prosecuting attorney who requests the results for use in a criminal prosecution under section 28-306 or 39-669.07 and (b) to any prosecuting attorney in another state who requests the results for use in a criminal prosecution for driving while intoxicated, driving under the influence, or motor vehicle homicide under the laws of the other state if the other state requires a similar disclosure by any hospital or person in such state to any prosecuting attorney in Nebraska who requests the results for use in such a criminal prosecution under the laws of Nebraska.

Sec. 4. That section 39-669.15, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-669.15. If a person arrested pursuant to section 39-669.08 refuses to submit to the chemical test of blood, breath, or urine required by that section, the test shall not be given except as provided in section 3 of this act for the purpose of medical treatment 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 39-669.08 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. 5. That section 39-6,122, Revised Statutes Supplement, 1990, be amended to read as follows:

39-6,122. Sections 39-601 to 39-6,122 and section 3 of this act shall be known and may be cited as the Nebraska Rules of the Road.

Sec. 6. That section 60-4,164, Revised Statutes Supplement, 1990, be amended to read as follows:

60-4,164. (1) Any person who operates or is in the actual physical control of a commercial motor vehicle upon a highway in this state shall be deemed to have given his or her consent to submit to a chemical test of his or her blood, breath, or urine for the purpose of determining the amount of alcoholic content in his or her blood, breath, or urine.

(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 who, after stopping or detaining the operator of any commercial motor vehicle, has reasonable grounds to believe that the operator was driving or in the actual physical control of a commercial motor vehicle while having any alcoholic liquor in his or her body may require such operator to submit to a chemical test of his or her blood, breath, or urine for the purpose of determining the alcoholic content of such blood, breath, or urine.

(3) 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 who operates or has in his or her actual physical control a commercial motor vehicle upon a highway in this state to submit to a

preliminary breath test of his or her breath for alcoholic content if the officer has reasonable grounds to believe that such person has any alcoholic liquor in his or her body, has committed a moving traffic violation, or has been involved in a traffic accident. Any such person who refuses to submit to a preliminary breath test shall be placed under arrest and shall be guilty of a Class V misdemeanor. Any person arrested for refusing to submit to a preliminary breath test or any person who submits to a preliminary breath test the results of which indicate the presence of any alcoholic liquor in such person's body may, upon the direction of a law enforcement officer, be required to submit to a chemical test of his or her blood, breath, or urine for a determination of the alcoholic content.

(4) Any person operating or in the actual physical control of a commercial motor vehicle who submits to a chemical test of his or her blood, breath, or urine which discloses the presence of any alcoholic liquor in his or her body shall be placed out of service for twenty-four hours by the law enforcement officer.

(5) Any person operating or in the actual physical control of a commercial motor vehicle who refuses to submit to a chemical test of his or her blood, breath, or urine or any person operating or in the actual physical control of a commercial motor vehicle who submits to a chemical test of his or her blood, breath, or urine which discloses an alcoholic concentration of: (a) Four-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood; (b) four-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath; or (c) four-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her urine shall be placed out of service for twenty-four hours by the law enforcement officer, and the officer shall forward to the director a sworn report. The report shall state that the person was operating or in the actual physical control of a commercial motor vehicle, was requested to submit to the required chemical test, and refused to submit to the required chemical test or submitted to the required chemical test and possessed an alcohol concentration at or in excess of that specified by this subsection.

(6) Any person involved in a commercial motor vehicle accident in this state may be required to submit to a chemical test of his or her blood, breath, or urine by any law enforcement officer if the officer has reasonable grounds to believe that such person was

driving or was in actual physical control of a commercial motor vehicle on a highway in this state while under the influence of alcoholic liquor at the time of the accident. A person involved in a commercial motor vehicle accident subject to the implied consent law of this state shall not be deemed to have withdrawn consent to submit to a chemical test of his or her blood, breath, or urine by reason of leaving this state. If the person refuses a test under this section and leaves the state for any reason following an accident, he or she shall remain subject to this section upon return.

Sec. 7. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 8. That original section 39-669.15, Reissue Revised Statutes of Nebraska, 1943, and sections 39-669.08, 39-669.11, 39-6,122, and 60-4,164, Revised Statutes Supplement, 1990, are repealed.

Sec. 9. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.