

LEGISLATIVE BILL 799

Approved by the Governor April 6, 1990

Introduced by Beyer, 3

AN ACT relating to the Nebraska Rules of the Road; to amend sections 39-669.07, 39-669.08, 39-669.09, 39-669.11, and 39-669.14, Reissue Revised Statutes of Nebraska, 1943; to provide that a person convicted of driving under the influence of alcoholic liquor or drugs may be required to attend a drug treatment program; to provide for implied consent to a chemical test for the presence of drugs as prescribed; to provide for the admission into evidence of the refusal to submit to tests as prescribed; to eliminate a provision providing for a choice of tests; to harmonize provisions; 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 39-669.07, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-669.07. (1) It shall be unlawful for any person to operate or be in the actual physical control of any motor vehicle:

~~(1)~~ (a) While under the influence of alcoholic liquor or of any drug;

~~(2)~~ (b) When such person has a concentration of ten-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood;

~~(3)~~ (c) When such person has a concentration of ten-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath; or

~~(4)~~ (d) When such person has a concentration of ten-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her urine.

(2) Any person who shall operate or be in the actual physical control of any motor vehicle while in a condition described in ~~subdivision (1); (2); (3); or (4)~~ subsection (1) of this section shall be deemed 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 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 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 {A} upon sentencing, {B} upon final judgment of any appeal or review, or {C} 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 for any purpose for a period of sixty days from the date of the order;

(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 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 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 {A} upon sentencing, {B} upon final judgment of any appeal or review, or {C} 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 in the ten years prior to the date of the current conviction, or (iii) has been convicted as described in subdivisions ~~(e)(i) and (e)(ii)~~ of this section (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 {A} upon sentencing, {B} upon final judgment of any appeal or review, or {C} 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.

(3) 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 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.

(4) 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.

(5) 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 (2)(c) of this section shall be guilty of a Class IV felony.

(6) Any city or village may enact ordinances in conformance with this section and section 39-669.08. 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.

(7) At the discretion of the court, any person convicted of violating this section or violating any city or village ordinance adopted in conformance with this section may be required to attend, at the convicted person's expense, an alcoholism or drug treatment program as a term of probation.

Sec. 2. That section 39-669.08, Reissue Revised Statutes of Nebraska, 1943, 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 a chemical blood, breath, or urine test 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 ~~subsection~~ 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 ~~subsection~~ 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 ~~(A)~~ upon sentencing, ~~(B)~~ upon final judgment of any appeal or review, or ~~(E)~~ 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 ~~subsection~~ 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 ~~subsection~~ 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 ~~(A)~~ upon sentencing, ~~(B)~~ upon final judgment of any appeal or review, or ~~(C)~~ 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 ~~subsection~~ 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 ~~subsection~~ 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 ~~(e)(i)~~ and ~~(e)(ii)~~ of this ~~subsection~~ (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 ~~(A)~~ upon sentencing, ~~(B)~~ upon final judgment of any appeal or review, or ~~(C)~~ 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 ~~subsection~~ 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 ~~subsection~~ section and under a city or village ordinance enacted pursuant to this ~~subsection~~ 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 ~~subsection~~ 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 ~~subsection~~ section shall be guilty of a Class IV felony.

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

(5) (9) 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. 3. That section 39-669.09, Reissue

Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-669.09. The law enforcement officer who requires a chemical blood, breath, or urine test or tests pursuant to section 39-669.08 may direct whether the test or tests shall be of blood, breath, or urine. ~~7 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 or her choice evaluate his or her condition and perform or have performed whatever laboratory tests he or she deems appropriate in addition to and following the test or tests administered at the direction of the law enforcement officer. If the officer ~~shall refuse~~ refuses to permit such additional test to be taken, then the original test or tests shall not be competent as evidence. Upon the request of the person tested, the results of the test or tests taken at the direction of the law enforcement officer shall be made available to him or her.

Sec. 4. That section 39-669.11, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-669.11. 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, in violation of section 39-669.07 or a city or village ordinance. Tests to be considered valid shall be ~~have been~~ 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. 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 permitholder.

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 deposited in the state treasury and ~~credited~~ remitted to the State Treasurer for credit to the Department of Health Cash Fund as a laboratory service fee.

Sec. 5. That section 39-669.14, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-669.14. Any person arrested for any offense involving the operation or actual physical control of a motor vehicle while under the influence of alcoholic liquor or drugs shall be required to submit to a chemical test or tests of his or her blood, breath, or urine as provided in section 39-669.08 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 or her incapable of testing by a preliminary breath test. Only a physician, registered nurse, or qualified technician acting at the request of a law enforcement officer may withdraw blood for the purpose of determining the alcoholic or drug content therein, but this limitation shall not apply to the taking of a urine or breath specimen.

Sec. 6. That original sections 39-669.07, 39-669.08, 39-669.09, 39-669.11, and 39-669.14, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 7. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.