

## LEGISLATIVE BILL 377

Approved by the Governor March 31, 1988

Introduced by Hall, 7; Wesely, 26

AN ACT relating to rules of the road; to amend section 39-669.16, Revised Statutes Supplement, 1986, and sections 39-669.07 and 39-669.08, Revised Statutes Supplement, 1987; to change penalty provisions relating to driving while under the influence of alcoholic liquor or a drug and refusal to submit to a chemical test; to provide severability; and to repeal the original sections.

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

Section 1. That section 39-669.07, Revised Statutes Supplement, 1987, be amended to read as follows:

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

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

(2) 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) 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) 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.

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) 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 previous conviction under this section since July 17, 1982, (ii) was not convicted under this section prior to July 17, 1982, or (iii) 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 either prior or subsequent to July 17, 1982 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 ~~of his or her conviction 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 ~~previous conviction under this section since July 17, 1982, (ii) has been convicted once under this section as it existed prior to July 17, 1982, or (iii) 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 either prior or subsequent to July 17, 1982 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 ~~of his or her conviction 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 ~~since July 17, 1982, (ii) has been convicted two or more times under this section as it existed prior to July 17, 1982, (iii) 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 either prior or subsequent to July 17, 1982, or (iv) in the ten years prior to the date of the current conviction, or (iii) has been convicted as described in subdivisions (c)(i) to (e)(iii) and (c)(ii) of this section 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 of his or her conviction 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.

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 prior or subsequent to July 17, 1982, and the defendant's prior convictions and under a city or village ordinance enacted pursuant to this section either prior or subsequent to July 17, 1982 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.

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.

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

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.

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 treatment program as a term of probation.

Sec. 2. That section 39-669.08, Revised Statutes Supplement, 1987, 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 of his or her blood, urine, or breath for the purpose of determining the amount of alcoholic content 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 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 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 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 of his or her blood, breath, or urine for a determination of the alcohol content. Any person who refuses to submit to a chemical blood, breath, or urine test 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 previous conviction under this subsection since July 17, 1982, (iii) was not convicted under this subsection prior to July 17, 1982, or (iii) 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 as authorized by section 39-669.07 in the ten years prior to the date of the current conviction, either prior or subsequent to July 17, 1982, 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 of his or her conviction 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 sixty days;

(b) If such person (i) has had one previous conviction under this subsection since July 17, 1982; ~~(ii) has been convicted once under this subsection as it existed prior to July 17, 1982;~~ or (iii) 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 as authorized by section 39-669.07 either prior or subsequent to July 17, 1982 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 ~~of his or her conviction 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 since July 17, 1982; ~~(ii) has been convicted two or more times under this subsection as it existed prior to July 17, 1982;~~ (iii) 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 as authorized by section 39-669.07 either prior or subsequent to July 17, 1982; ~~or (iv) in the ten years prior to the date of the current conviction,~~ or (iii) has been convicted as described in subdivisions (c)(i) to (e)(iii) and (c)(ii) of this subsection 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 of his or her conviction 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.

For each conviction under this subsection, 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 prior or subsequent to July 17, 1982, and the defendant's prior convictions and under a city or village ordinance enacted pursuant to this subsection or section 39-669.07 either prior or subsequent to July 17, 1982 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.

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 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.

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 (c) of this subsection shall be guilty of a Class IV felony.

Any city or village may enact ordinances in conformance with this subsection. Upon conviction of

any person of a violation of such city or village ordinance, the provisions of this subsection 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.

(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 39-669.16, Revised Statutes Supplement, 1986, be amended to read as follows:

39-669.16. 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 or her 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 six months one year from the date of such order, except that the director shall dismiss all proceedings against the operator under this section or reinstate the operator's license pursuant to section 60-505.02 upon receipt of a certified copy of the motor vehicle operator's plea of guilty or no contest to the trial court to the misdemeanor charge of driving under the influence of alcohol in the county or district court where the offense occurred which gave rise to the proceedings. For the purpose of such hearing, the director may appoint an examiner who shall have power to preside at such hearing, administer oaths, examine witnesses, take testimony, and thereafter report the same to the director. At the expiration of the six-month one-year revocation period, such person may have his or her license reinstated upon payment of a fee of fifty dollars. The fees paid pursuant to this section shall be deposited in the Department of Motor Vehicles Cash Fund.

Sec. 4. 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. 5. That original section 39-669.16, Revised Statutes Supplement, 1986, and sections 39-669.07 and 39-669.08, Revised Statutes Supplement, 1987, are repealed.