

## LEGISLATIVE BILL 948

Approved by the Governor May 26, 1971

Introduced by John W. DeCamp, 40th District

AN ACT to amend sections 39-727, 39-727.03, 39-727.04, 39-727.06, 39-727.07, and 39-727.13, Reissue Revised Statutes of Nebraska, 1943, relating to use of public roads; to require drivers to submit to tests for alcoholic content in the blood as prescribed; to prescribe an unlawful alcoholic content; to provide for local ordinances; to provide penalties; to make refusal to submit to such tests unlawful; and to repeal the original sections, and also sections 39-727.02, 39-727.08, 39-727.09, 39-727.10, 39-727.11, and 39-727.12, Reissue Revised Statutes of Nebraska, 1943, section 39-727.01, Revised Statutes Supplement, 1969, section 39-727.14, Revised Statutes Supplement, 1969, as amended by section 1, Legislative Bill 402, Eighty-second Legislature, First Session, 1971, and section 2, Legislative Bill 402, Eighty-second Legislature, First Session, 1971.

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

Section 1. That section 39-727, Reissue Revised Statutes of Nebraska, 1943, 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 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 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, 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 or upon violation of a city or village ordinance, or both. Any city or village may enact ordinances in conformance with this section. 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, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-727.03. 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. ~~The test shall be administered at the direction of a law enforcement officer whenever the person has been arrested for any offense (1) involving operating a motor vehicle under the influence of alcoholic liquor in violation of a statute or a city or village ordinance when the arresting officer has reasonable grounds to believe that before his arrest the person was driving while under the influence of alcoholic liquor, or (2) involving driving or being in actual physical control of a motor vehicle with an amount of alcohol in the blood in violation of a statute or a city or village ordinance when the arresting officer has reasonable grounds to believe that before his arrest the person was driving or in actual physical control of a motor vehicle with an amount of alcohol in his or her blood in violation of a statute or a city or village ordinance.~~ 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 to submit to a 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 breath test or whose breath test results indicate an alcohol content of ten-hundredths of one per cent or more shall be placed under arrest. Any person so arrested may then, upon the direction of the law enforcement officer, be required to submit to a 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 shall 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 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.

Sec. 3. That section 39-727.04, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-727.04. The person ~~so-arrested-or-taken-into custody required to submit to a blood or urine test pursuant to section 39-727.03~~ may choose whether the test ~~so-required~~ shall be ~~a-chemical-test~~ of his blood or urine, ~~or-of-his-breath--if--equipment--for--testing breath-is-then-and-there-available--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;--Provided;--this--limitation shall-not-apply-to-the--taking--of--a--urine--or--breath specimen;~~ 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 39-727.06, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-727.06. Any test made under the provisions of ~~sections section~~ section 39-727.03, to-39-727.42; if made in conformity with the requirements of this section, 39-727.02; shall be valid-for-the--purposes--of--section 39-727.04; ~~and--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 involving driving or being in actual physical control of a motor vehicle with an amount of alcohol in the blood in violation of a statute or a city or village ordinance. Tests to be considered valid shall 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.

Sec. 5. That section 39-727.07, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-727.07. No physician, registered nurse, or registered laboratory technologist shall be held liable, in damages or otherwise, for any act done or omitted in performing the act of withdrawing blood at the request of a law enforcement officer pursuant to ~~sections~~ section 39-727.03, to-39-727.12,

Sec. 6. That section 39-727.13, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

39-727.13. Upon the conviction of any person for violation of the provisions of section 39-727, or of driving a motor vehicle while under the influence of alcoholic liquor in violation of any city or village ordinance, there shall be assessed as part of the costs the fee charged by any physician for the test administered and the analysis thereof under the provisions of ~~sections 39-727.04--to--39-727.07~~ section 39-727.03, if such test was actually made.

Sec. 7. Any person arrested for any offense involving the operation of a motor vehicle while under the influence of alcoholic liquor shall be required to submit to a blood 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. 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. 8. That original sections 39-727, 39-727.03, 39-727.04, 39-727.06, 39-727.07, and 39-727.13, Reissue Revised Statutes of Nebraska, 1943, and also sections 39-727.02, 39-727.08, 39-727.09, 39-727.10, 39-727.11, and 39-727.12, Reissue Revised Statutes of Nebraska, 1943, section 39-727.01, Revised Statutes Supplement, 1969, section 39-727.14, Revised Statutes Supplement, 1969, as amended by section 1, Legislative Bill 402, Eighty-second Legislature, First Session, 1971, and section 2, Legislative Bill 402, Eighty-second Legislature, First Session, 1971, are repealed.