

Subd. 4. An appeal from any final order or judgment in such action may be taken to the supreme court in the same manner as appeals in ordinary civil actions.

Subd. 5. This section does not apply to controversies arising out of any contract for the construction or repair of a state trunk highway.

Sec. 5. Minnesota Statutes 1957, Section 3.81 is amended to read:

3.81 List of awards. Upon the convening of the legislature, the clerk shall certify to the commissioner of administration a list of all awards recommended by the commission to the legislature for appropriation. The commissioner of administration shall include all awards so certified in the budget estimates submitted to the governor elect immediately after his election.

~~The house members of the commission shall constitute the claims committee of the house and the senate members shall constitute the claims committee of the senate during a regular or special session of the legislature.~~

Approved April 20, 1961.

CHAPTER 454—S. F. No. 327

[Coded in Part]

An act requiring consent to permit a chemical test for intoxication as a prerequisite to operating a motor vehicle, and providing penalties for a refusal to submit to such test; amending Minnesota Statutes 1957, Section 169.121, Subdivision 2.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. [169.123] Chemical tests for intoxication [Subdivision 1.] *For purposes of this act the term peace officer means a state highway patrol officer or full-time police officer of any municipality having satisfactorily completed a prescribed course of instruction in a school for instruction of persons in law enforcement conducted by the university of Minnesota or a similar course considered equivalent by the commissioner of highways.*

Changes or additions indicated by italics, deletions by strikeout.

Sec. 2. [Subd. 2.] Implied consent; conditions; elections as to type of test. *Any person who drives or operates a motor vehicle upon the public highways of this state shall be deemed to have given consent subject to the provisions of this act to a chemical test of his blood, breath, saliva or urine for the purpose of determining the alcoholic content of his blood. The test shall be administered at the direction of a peace officer, when (1) the officer has reasonable and probable grounds to believe that a person was driving or operating a motor vehicle while said person was under the influence of an alcoholic beverage, and (2) the said person has been lawfully placed under arrest for alleged commission of the said described offense in violation of Minnesota Statutes 1957, Section 169.121. No action shall be taken hereunder against the said person unless the two enumerated conditions existed at the time the officer requested the chemical test specimen. Any person may elect to take a breath, saliva or urine test in lieu of a direct blood test; and no action shall be taken for declining a test unless either a breath, saliva, or urine test was available. At the time the peace officer requests such chemical test specimen, he shall inform the said person that his right to drive may be revoked or denied if he refuses to permit the test and that he has the right to have additional tests made by a person of his own choosing.*

Sec. 3. [Subd. 3.] Manner of making test; additional tests. *Only a physician, or a medical technician, or registered nurse acting at the request of a peace officer may withdraw blood for the purpose of determining the alcoholic content therein. This limitation shall not apply to the taking of a breath, saliva or urine specimen. The person tested shall have the right to a physician, or a medical technician, or registered nurse of his own choosing administer a chemical test or tests in addition to any administered at the direction of a peace officer; provided, that the additional test specimen on behalf of said person be obtained at the place where such person is in custody and at no expense to the state. Said person shall have the right to immediately communicate with his attorney, doctor or any other person in order to secure a physician, medical technician or registered nurse, for the purpose of administering such additional test or tests; but this shall in no way delay the administering of the test at the direction of the peace officer. The failure or inability to obtain an additional test or tests by a person shall not preclude the admission in evidence of the test taken at the direction*

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of a peace officer unless the additional test was prevented or denied by the peace officer. Upon the request of the person who is tested, full information concerning the test or tests taken at the direction of the peace officer shall be made available to him. The physician, medical technician or registered nurse drawing blood at the request of a peace officer for the purpose of determining alcoholic content shall in no manner be liable in any civil or criminal action except for negligence in drawing the blood. The person administering such test at the request and direction of such peace officer shall be fully trained in the administration and interpretation of such tests pursuant to standards promulgated by rule by the commissioner of highways.

Sec. 4. [Subd. 4.] Refusal to permit test; revocation of license. *If a person under arrest refuses to permit chemical testing, none shall be given, but the commissioner of highways, upon the receipt of a certificate of the peace officer that he had reasonable and probable grounds to believe the arrested person had been driving or operating a motor vehicle upon the public highways while under the influence of intoxicating liquor, and that the person had refused to permit the test, shall revoke his license or permit to drive and any nonresident operating privilege for a period of six months. If the person is a resident without a license or permit to operate a motor vehicle in this state, the commissioner of highways shall deny to the person the issuance of a license or permit for a period of six months after the date of the alleged violation, subject to review as hereinafter provided.*

Sec. 5. [Subd. 5.] Notice of revocation; request for hearing. *No revocation under section 4 shall be made until the commissioner notifies the person by certified or registered mail of the intention to revoke and allows said person a 20 day period after the date of receiving said notice to request in writing a hearing before the commissioner as herein provided. If no request is filed within the 20 day period the commissioner may then issue an order of revocation. However if a request for hearing is filed, no revocation hereunder shall be made until final judicial determination resulting in an adverse decision to said person. Nothing hereunder shall affect the right to suspend or revoke authorized under other provisions of law. In the case of a resident without a license or permit to operate a motor vehicle who becomes subject to denial of a license or permit under section 4, the commissioner shall give notice under this section and*

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the driver shall have the same right to request a review within a 20 day period. Further procedure shall be the same as in case of revocation, except that the denial shall continue in effect for the six month period after the date of the alleged violation or until the date of a determination before the commissioner or in district court in favor of said driver.

Sec. 6. [Subd. 6.] Hearing. *The hearing shall be before a municipal judge, or probate judge if no municipal judge is available, learned in the law, in the county of the residence of the person arrested, unless there is agreement that the hearing may be held in some other county. The hearing shall be recorded and proceed as in a criminal matter, without the right of trial by jury, and its scope shall cover the issues of whether the peace officer had reasonable and probable grounds to believe the person was driving or operating a motor vehicle while under the influence of an alcoholic beverage; whether the person was lawfully placed under arrest; whether he refused to permit the test, and if he refused whether he had reasonable grounds for refusing to permit the test; and whether at the time of request for the test the peace officer informed the said person that his right to drive might be revoked or denied if he refused to permit the test and of his right to have additional tests made by a person of his own choosing. The municipal court shall order either that the revocation or denial be rescinded or sustained and refer such order to the commissioner of highways for his further action.*

Sec. 7. [Subd. 7.] Review by district court. *If the revocation or denial is sustained, the person whose license or permit to drive, or nonresident operating privilege has been revoked or denied, may within 20 days after notice of the determination by the commissioner of highways file a petition for a hearing of the matter in the district court in the county of the defendant's residence. The petition shall be filed with the clerk of the said court together with proof of service of a copy thereof on the commissioner. It shall be the duty of the court to set the matter for hearing on a day certain with reasonable notice thereof to the parties. The matter shall be heard de novo with a right of trial by jury.*

Sec. 8. [Subd. 8.] Venue; notice of action to other states. *In the event of a request for a hearing by a non-resident of the state of Minnesota as provided by section 6, or an appeal by a non-resident of the state of Minnesota as provided by section 7, such hearing or appeal shall be heard*

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in the county where the offense occurred. When it has been finally determined that a non-resident's privilege to operate a motor vehicle in this state has been revoked or denied, the commissioner of highways shall give information in writing of the action taken to the official in charge of traffic control or public safety of the state of the person's residence and of any state in which he has a license.

Sec. 9. Minnesota Statutes 1957, Section 169.121, Subdivision 2, is amended to read as follows:

Subd. 2. Upon the trial of any prosecution arising out of acts alleged to have been committed by any person arrested for driving, operating, or in actual physical control of a motor vehicle while under the influence of an alcoholic beverage, the court may admit evidence of the amount of alcohol in the person's blood taken voluntarily or pursuant to sections 1 through 8 of this act within two hours of the time of the offense as shown by a medical or chemical analysis of his breath, blood, urine or saliva.

For the purposes of this subdivision:

(a) evidence that there was at the time 0.05 percent or less by weight of alcohol in the person's blood is prima facie evidence that such person was not under the influence of an alcoholic beverage;

(b) evidence that there was at the time more than 0.05 percent and less than 0.15 percent by weight of alcohol in the person's blood is relevant evidence but it is not to be given prima facie effect in indicating whether or not the person was under the influence of an alcoholic beverage;

(c) evidence that there was at the time 0.15 percent or more by weight of alcohol in the person's blood may be admitted as prima facie evidence that the person was under the influence of an alcoholic beverage.

The foregoing provisions shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether or not such person was under the influence of an alcoholic beverage, *but the refusal to permit the taking of specimens for such chemical analysis shall not be admissible in evidence. In the event of a breath, saliva or urine test, the percentages above shall be increased by 20 percent.*

For the purposes of this section, an "alcoholic beverage"

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means any liquid containing more than one-half of one percent of alcohol by volume.

Approved April 20, 1961.

CHAPTER 455—S. F. No. 344

[Not Coded]

An act providing for the disposition of an old armory and site at Austin and appropriating the proceeds thereof.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Austin armory; disposition of building and site. The adjutant general with the approval of the governor, may sell and convey on behalf of the state the old armory, including the site, at the city of Austin. Money received from the sale of such armory and site is appropriated to the adjutant general to be used as follows:

(1) As a contribution of the state for the construction of a new armory at the city of Austin; or

(2) Transferred to the Minnesota State Armory Building Commission to be expended in the construction of a new armory at the city of Austin.

The provisions of Minnesota Statutes 1957, Section 193.36, Subdivision 3, shall have no application to the disposition of the old armory and site at the city of Austin.

Approved April 20, 1961.

CHAPTER 456—S. F. No. 348

An act relating to game and fish; providing for licenses for residents and nonresidents; amending Minnesota Statutes 1957, Section 98.46, Subdivisions 2 and 15.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Minnesota Statutes 1957, Section 98.46, Subdivision 2, is amended to read:

Subd. 2. Fees for the following licenses, to be issued to residents only, shall be:

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