

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

Section 1. Minnesota Statutes 1969, Section 169.01, Subdivision 21, is amended to read:

Subd. 21. **HIGHWAY TRAFFIC REGULATIONS; DEFINITIONS; COMMISSIONER.** Unless stated otherwise, "commissioner" means the commissioner of highways of this state, . Regardless of the commissioner referred to, however, he is to be considered as acting directly or through his duly authorized officers and agents.

Sec. 2. Minnesota Statutes 1969, Section 169.01, Subdivision 22, is amended to read:

Subd. 22. **DEPARTMENT.** Unless stated otherwise, "department" means the department of highways of this state, . Regardless of the department referred to, however, it is to be considered as acting directly or through its duly authorized officers and agents.

Approved April 27, 1971.

CHAPTER 165—H.F.No.360

[Coded in Part]

An act relating to aeronautics; requiring consent to permit a chemical test for intoxication as a prerequisite to operating an aircraft; prescribing penalties; amending Minnesota Statutes 1969, Chapter 360, by adding a section and Section 360.075, by adding a subdivision.

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

Section 1. Minnesota Statutes 1969, Chapter 360, is amended by adding a section to read:

[360.0751] AERONAUTICS; CHEMICAL TESTS FOR INTOXICATION. Subdivision 1. PEACE OFFICER DEFINED. For purposes of this act, the term "peace officer" means a full-time police officer of any municipality, airport, or county, 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 public safety.

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Subd. 2. IMPLIED CONSENT; CONDITIONS; ELECTION AS TO TYPE OF TEST. Any person who operates or attempts to operate an aircraft in this state shall be deemed to have given consent subject to the provisions of this section for a chemical test of his blood, breath, 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 operating or attempting to operate an aircraft while he was under the influence of an alcoholic beverage, and (2) the person has been lawfully placed under arrest for alleged commission of that offense in violation of Minnesota Statutes, Section 360.075. No action shall be taken hereunder against the person unless the two enumerated conditions existed at the time the officer requested the chemical test specimen. A person may decline to take a direct blood test and elect to take either a breath, or urine test, whichever is available, in lieu thereof, and either a breath or urine test shall be made available to the arrested person who makes the election. No action shall be taken against the person for declining to take a direct blood test unless either a breath, or urine test was available. At the time the peace officer requests a chemical test specimen, he shall inform the arrested person that his right to fly 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.

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, or urine specimen. The person tested shall have the right to have 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 of the person be obtained at the place where the person is in custody and at no expense to the state. The 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 the 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 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

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liable in any civil or criminal action except for negligence in drawing the blood. The person administering the test at the request and direction of the peace officer shall be fully trained in the administration and interpretation of the tests pursuant to standards promulgated by rule by the commissioner of public safety.

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 aeronautics, upon the receipt of a certificate of the peace officer that he had reasonable and probable grounds to believe the arrested person had been operating or attempting to operate an aircraft while under the influence of an alcoholic beverage, and that the person had refused to permit the test, shall revoke his certificate of registration or license for a period of one year. If the person is a resident without a certificate of registration or license to operate an aircraft in this state, the commissioner of aeronautics shall deny to the person the issuance of a certificate of registration or license for a period of one year after the date of the alleged violation, subject to review as hereinafter provided.

Subd. 5. NOTICE OF REVOCATION OR DETERMINATION TO DENY; REQUEST FOR HEARING. No revocation under subdivision 4 shall be made until the commissioner notifies the person by certified or registered mail of the intention to revoke and allows him a 20 day period after the date of receiving the notice to request of the commissioner, in writing, a hearing 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 the person.

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 where the arrest occurred, 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 operating or attempting to operate an aircraft 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 person that his right to fly 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 court shall order either that the revocation or denial be rescinded or sustained and refer the order to the commissioner of aeronautics for his further action.

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Subd. 7. REVIEW BY DISTRICT COURT. If the revocation or denial is sustained, the person whose certificate of registration or license has been revoked or denied, may within 20 days after notice of the determination by the commissioner file a petition for a hearing of the matter in the district court in the county where the hearing pursuant to subdivision 6 was held unless there is agreement that the hearing may be held in some other county. The petition shall be filed with the clerk of court together with proof of service of a copy 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.

Subd. 8. NOTICE OF ACTION TO OTHER STATES. When it has been finally determined that a nonresident's privilege to operate an aircraft in this state has been revoked or denied, the commissioner shall give information in writing of the action taken to the appropriate federal authorities and any state in which he has a license to operate an aircraft.

Sec. 2. Minnesota Statutes 1969, Section 360.075, is amended by adding a subdivision to read:

Subd. 7. OPERATION OF AIRCRAFT WHILE INTOXICATED. Upon the trial of any prosecution for a violation of subdivision 1, clause (2), the court may admit evidence of the amount of alcohol in the person's blood taken voluntarily or pursuant to section 1 of this act as shown by a medical or chemical analysis of his blood, or of his breath or urine if the person arrested elected to take such test in lieu thereof.

For the purpose of this subdivision:

(a) Evidence that there was at the time more than 0.03 percent and less than 0.05 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.

(b) Evidence that there was at the time 0.05 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 or urine test, the percentage above shall be increased by ten percent.

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For the purposes of this section, an "alcoholic beverage" means any liquid containing more than one half of one percent of alcohol by volume.

Approved April 28, 1971.

CHAPTER 166—H.F.No.471

An act expanding the jurisdiction of the probate court in certain counties; amending Minnesota Statutes 1969, Section 525.011, Subdivision 1.

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

Section 1. Minnesota Statutes 1969, Section 525.011, Subdivision 1, is amended to read:

525.011 PROBATE COURT; CIVIL AND CRIMINAL JURISDICTION. Subdivision 1. Except in counties having a city of the first class or in counties having a population of more than 30,000 according to the 1950 federal census, the probate court shall also exercise the powers, duties and jurisdiction conferred upon municipal courts by Minnesota Statutes, ~~Chapter~~ Chapters 488, 491, 492, and 493, or under any other law enacted in lieu thereof which provides for uniform powers, duties and jurisdiction of municipal courts.

Approved April 28, 1971.

CHAPTER 167—H.F.No.2218

An act relating to boards of municipal works in cities of the second class; repealing Minnesota Statutes 1969, Sections 442.03 to 442.25.

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

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