

attendant, volunteer first provider of emergency medical services, and any partnership, corporation, association, or other entity.

For the purposes of this section, compensation does not include nominal payments, reimbursement for expenses, or pension benefits.

Approved April 23, 1984

CHAPTER 430 — S.F.No. 1642

An act relating to highway traffic regulations; providing for breath tests to be administered using an infrared breath-testing instrument for the purpose of determining the presence of alcohol or a controlled substance; authorizing the results of infrared breath-tests to be admissible into evidence in civil and criminal hearings; amending Minnesota Statutes 1982, sections 169.01, by adding a subdivision; 169.121, subdivision 6; 169.123, subdivisions 4, 5a, and by adding a subdivision; Minnesota Statutes 1983 Supplement, sections 169.121, subdivision 2; 169.123, subdivisions 2 and 3; proposing new law coded in Minnesota Statutes, chapter 634.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1982, section 169.01, is amended by adding a subdivision to read:

Subd. 68. INFRARED BREATH-TESTING INSTRUMENT. “Infrared breath-testing instrument” means a breath-testing instrument that employs infrared technology and has been approved by the commissioner of public safety for determining alcohol concentration.

Sec. 2. Minnesota Statutes 1983 Supplement, section 169.121, subdivision 2, is amended to read:

Subd. 2. **EVIDENCE.** Upon the trial of any prosecution arising out of acts alleged to have been committed by any person arrested for driving, operating, or being in physical control of a motor vehicle in violation of subdivision 1, the court may admit evidence of the amount of alcohol or a controlled substance in the person's blood, breath, or urine as shown by a ~~medical or chemical~~ an analysis of ~~it~~ those items, if the test is taken voluntarily or pursuant to section 169.123.

For the purposes of this subdivision:

(a) evidence that there was at the time an alcohol concentration of 0.05 or less is prima facie evidence that the person was not under the influence of alcohol;

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(b) evidence that there was at the time an alcohol concentration of more than 0.05 and less than 0.10 is relevant evidence in indicating whether or not the person was under the influence of alcohol.

Evidence of the refusal to take a test is admissible into evidence in a prosecution under this section or an ordinance in conformity with it.

For purposes of this section and section 169.123, the result of an evidentiary test administered within two hours of the alleged violation is deemed to be the alcohol concentration at the time of the violation.

The foregoing provisions do not limit the introduction of any other competent evidence bearing upon the question whether or not the person was under the influence of alcohol or a controlled substance, including tests obtained more than two hours after the alleged violation and results obtained from partial tests on an infrared breath-testing instrument. A result from a partial test is the measurement obtained by analyzing one adequate breath sample, as defined in section 5, paragraph (b).

Sec. 3. Minnesota Statutes 1982, section 169.121, subdivision 6, is amended to read:

Subd. 6. **PRELIMINARY SCREENING TEST.** When a peace officer has reason to believe from the manner in which a person is driving, operating, controlling, or acting upon departure from a motor vehicle, or has driven, operated, or controlled a motor vehicle, that the driver may be violating or has violated subdivision 1, he may require the driver to provide a sample of his breath for a preliminary screening test using a device approved by the commissioner of public safety for this purpose. The results of this preliminary screening test shall be used for the purpose of deciding whether an arrest should be made and whether to require the ~~chemical~~ tests authorized in section 169.123, but shall not be used in any court action except to prove that a ~~chemical~~ test was properly required of a person pursuant to section 169.123, subdivision 2. Following the screening test additional tests may be required of the driver pursuant to the provisions of section 169.123.

The driver who refuses to furnish a sample of his breath is subject to the provisions of section 169.123 unless, in compliance with section 169.123, he submits to a blood, breath or urine test to determine the presence of alcohol or a controlled substance.

Sec. 4. Minnesota Statutes 1983 Supplement, section 169.123, subdivision 2, is amended to read:

Subd. 2. **IMPLIED CONSENT; CONDITIONS; ELECTION AS TO TYPE OF TEST.** (a) Any person who drives, operates, or is in physical control of a motor vehicle within this state consents, subject to the provisions of this section and section 169.121, to a ~~chemical~~ test of his blood, breath, or urine for

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the purpose of determining the presence of alcohol or a controlled substance. The test shall be administered at the direction of a peace officer. The test may be required of a person when an officer has reasonable and probable grounds to believe the person was driving, operating, or in physical control of a motor vehicle in violation of section 169.121 and one of the following conditions exist: (1) the person has been lawfully placed under arrest for violation of section 169.121, or an ordinance in conformity with it; or (2) the person has been involved in a motor vehicle accident or collision resulting in property damage, personal injury, or death; or (3) the person has refused to take the screening test provided for by section 169.121, subdivision 6; or (4) the screening test was administered and recorded an alcohol concentration of 0.10 or more. No action may be taken against the person for declining to take a direct blood test, if offered, unless an alternative test was offered.

(b) At the time a ~~chemical test specimen~~ is requested, the person shall be informed:

(1) that if testing is refused, the person's right to drive will be revoked for a minimum period of six months;

(2) that if a test is taken and the results indicate that the person is under the influence of alcohol or a controlled substance, the person will be subject to criminal penalties and the person's right to drive may be revoked for a minimum period of 90 days;

(3) that the person has a right to consult with an attorney but that this right is limited to the extent that it cannot unreasonably delay administration of the test or the person will be deemed to have refused the test;

(4) that after submitting to testing, the person has the right to have additional tests made by a person of his own choosing; and

(5) that if he refuses to take a test, the refusal will be offered into evidence against him at trial.

Sec. 5. Minnesota Statutes 1982, section 169.123, is amended by adding a subdivision to read:

Subd. 2b. BREATH TEST USING AN INFRARED BREATH-TESTING INSTRUMENT. (a) In the case of a breath test administered using an infrared breath-testing instrument, the test shall consist of analyses in the following sequence: one adequate breath sample analysis, one calibration standard analysis, and a second, adequate breath sample analysis.

(b) In the case of a test administered using an infrared breath-testing instrument, a sample is adequate if the instrument analyzes the sample and does not indicate the sample is deficient.

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(c) For purposes of this section when a test is administered using an infrared breath-testing instrument, failure of a person to provide two separate, adequate breath samples in the proper sequence constitutes a refusal.

Sec. 6. Minnesota Statutes 1983 Supplement, section 169.123, subdivision 3, is amended to read:

Subd. 3. MANNER OF MAKING TEST; ADDITIONAL TESTS.

Only a physician, medical technician, physician's trained mobile intensive care paramedic, registered nurse, medical technologist or laboratory assistant acting at the request of a peace officer may withdraw blood for the purpose of determining the presence of alcohol or controlled substance. This limitation does not apply to the taking of a breath or urine ~~specimen~~ sample. The person tested has the right to have a person 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~~ sample on behalf of the person is obtained at the place where the person is in custody, after the test administered at the direction of a peace officer, and at no expense to the state. 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. The physician, medical technician, physician's trained mobile intensive care paramedic, medical technologist, laboratory assistant or registered nurse drawing blood at the request of a peace officer for the purpose of determining alcohol concentration shall in no manner be liable in any civil or criminal action except for negligence in drawing the blood. The person administering a breath test shall be fully trained in the administration of breath tests pursuant to training given by the commissioner of public safety.

Sec. 7. Minnesota Statutes 1982, section 169.123, subdivision 4, is amended to read:

Subd. 4. REFUSAL, CONSENT TO PERMIT TEST; REVOCATION OF LICENSE. If a person refuses to permit ~~chemical testing a test~~, none shall be given, but the peace officer shall report the refusal to the commissioner of public safety and the authority having responsibility for prosecution of misdemeanor offenses for the jurisdiction in which the acts occurred. If a person submits to ~~chemical testing a test~~ and the test results indicate an alcohol concentration of 0.10 or more, the results of the test shall be reported to the commissioner of public safety and to the authority having responsibility for prosecution of misdemeanor offenses for the jurisdiction in which the acts occurred.

Upon certification by the peace officer that there existed reasonable and probable grounds to believe the person had been driving, operating, or in physical control of a motor vehicle while under the influence of alcohol or a controlled substance and that the person refused to submit to ~~chemical testing a test~~, the

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commissioner of public safety shall revoke the person's license or permit to drive, or his nonresident operating privilege, for a period of six months. Upon certification by the peace officer that there existed reasonable and probable grounds to believe the person had been driving, operating or in physical control of a motor vehicle while under the influence of alcohol or a controlled substance and that the person submitted to ~~chemical testing~~ a test and the test results indicate an alcohol concentration of 0.10 or more, the commissioner of public safety shall revoke the person's license or permit to drive, or his nonresident operating privilege, for a period of 90 days.

If the person is a resident without a license or permit to operate a motor vehicle in this state, the commissioner of public safety shall deny to the person the issuance of a license or permit for the same period after the date of the alleged violation as provided herein for revocation, subject to review as hereinafter provided.

Sec. 8. Minnesota Statutes 1982, section 169.123, subdivision 5a, is amended to read:

Subd. 5a. **PEACE OFFICER AGENT FOR NOTICE OF REVOCATION.** On behalf of the commissioner of public safety a peace officer offering a ~~chemical~~ test or directing the administration of a ~~chemical~~ test shall serve immediate notice of intention to revoke and of revocation on a person who refuses to permit ~~chemical testing~~ a test or on a person who submits to a ~~chemical~~ test the results of which indicate an alcohol concentration of 0.10 or more. The officer shall take the license or permit of the driver, if any, and issue a temporary license effective only for 7 days. The peace officer shall send the person's driver's license to the commissioner of public safety along with the certificate required by subdivision 4.

Sec. 9. **[634.16] ADMISSION INTO EVIDENCE OF RESULTS OF INFRARED BREATH-TESTS.**

In any civil or criminal hearing or trial, the results of an infrared breath-test, when performed by a person who has been fully trained in the use of an infrared breath-testing instrument, as defined in section 1, pursuant to training given or approved by the commissioner of public safety or his acting agent, are admissible in evidence without antecedent expert testimony that an infrared breath-testing instrument provides a trustworthy and reliable measure of the alcohol in the breath.

Sec. 10. **EFFECTIVE DATE.**

Sections 1 to 9 are effective the day after final enactment and apply to trials or hearings commenced on or after the effective date.

Approved April 23, 1984

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