

(h) Any cash payments received must be placed by the county in a special fund to be used only for the purposes for which the money was obtained.

(i) Any cash payments received must be used only for the acquisition and development or improvement of parks, recreational facilities, playgrounds, trails, wetlands, or open space. Cash payments must not be used for ongoing operation, maintenance, or redevelopment of parks, recreational facilities, playgrounds, trails, wetlands, or open space.

(j) The county must not deny the approval of a subdivision based on an inadequate supply of parks, open spaces, trails, or recreational areas within the county.

(k) The county must not condition the approval of any proposed subdivision or development on an agreement to waive the right to challenge the validity of a fee or dedication.

(l) The county must use at least 75 percent of the funds collected under this subdivision according to the plan required in paragraph (c) in the township or city where the collection of funds occurs. However, the township board or city council may agree to allow the county to use these funds outside of the township or city in a manner consistent with the county parks, trails, and open space capital improvement plan or the county parks and open space component in its comprehensive plan. The remainder of the funds may be used by the county only for parks and trails connectivity and accessibility purposes. The county must annually report to cities and townships on where funds were collected and where funds were expended in the past year.

(m) Previously subdivided property from which a park dedication has been received, being resubdivided with the same number of lots, is exempt from park dedication requirements. If, as a result of resubdividing the property, the number of lots is increased, then the park dedication or per lot cash fee must apply only to the net increase of lots.

(n) A county must not require a dedication of a portion of a proposed subdivision or a payment in lieu of dedication in a town or city that has adopted a requirement to dedicate or a payment in place of dedication as a provision of the town or city's subdivision regulations under section 462.358, subdivision 2b, or chapter 366.

(o) A county may negotiate an agreement with a town or city to share the revenue generated by dedicating a portion of a proposed subdivision or a payment in place of dedication.

Presented to the governor May 23, 2003

Signed by the governor May 27, 2003, 1:56 p.m.

CHAPTER 96—S.F.No. 1158

An act relating to public safety; modifying provisions relating to DWI breath-testing

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instruments; amending Minnesota Statutes 2002, sections 169A.03, subdivision 11; 169A.45, subdivision 4; 169A.51, subdivision 5; 169A.75; 360.0753, subdivision 4; 634.16.

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

Section 1. Minnesota Statutes 2002, section 169A.03, subdivision 11, is amended to read:

Subd. 11. **INFRARED OR OTHER APPROVED BREATH-TESTING INSTRUMENT.** "Infrared or other approved breath-testing instrument" means a breath-testing instrument that employs infrared or other technology and has been approved by the commissioner of public safety for determining alcohol concentration.

Sec. 2. Minnesota Statutes 2002, section 169A.45, subdivision 4, is amended to read:

Subd. 4. **OTHER COMPETENT EVIDENCE ADMISSIBLE.** The preceding provisions do not limit the introduction of any other competent evidence bearing upon the question of whether the person violated section 169A.20 (driving while impaired) or 169A.31 (alcohol-related school bus or Head Start bus driving), including tests obtained more than two hours after the alleged violation and results obtained from partial tests on an infrared or other approved breath-testing instrument. A result from a partial test is the measurement obtained by analyzing one adequate breath sample, as described in section 169A.51, subdivision 5, paragraph (b) (breath test using infrared or other approved breath-testing instrument).

Sec. 3. Minnesota Statutes 2002, section 169A.51, subdivision 5, is amended to read:

Subd. 5. **BREATH TEST USING INFRARED APPROVED BREATH-TESTING INSTRUMENT.** (a) In the case of a breath test administered using an infrared or other approved breath-testing instrument, the test must consist of analyses in the following sequence: one adequate breath-sample analysis, one ~~calibration~~ standard control analysis, and a second, adequate breath-sample analysis.

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

(c) For purposes of section 169A.52 (revocation of license for test failure or refusal), when a test is administered using an infrared or other approved breath-testing instrument, failure of a person to provide two separate, adequate breath samples in the proper sequence constitutes a refusal.

(d) For purposes of section 169A.52 (revocation of license for test failure or refusal), when a test is administered using an infrared or other approved breath-testing instrument, a breath test consisting of two separate, adequate breath samples within 0.02 alcohol concentration is acceptable. A breath test consisting of two separate, adequate breath samples failing to meet this criterion is deficient.

(e) If the first breath test is deficient, as defined by paragraph (d), a second breath test must be administered.

(f) Two deficient breath tests, as defined by paragraph (d), constitute a refusal.

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 4. Minnesota Statutes 2002, section 169A.75, is amended to read:

169A.75 IMPAIRED DRIVING-RELATED RULES.

(a) The commissioner may ~~promulgate~~ adopt rules to carry out the provisions of this chapter. The rules may include ~~forms~~ the format for notice of intention to revoke that describe clearly the right to a hearing, the procedure for requesting a hearing, and the consequences of failure to request a hearing; ~~forms~~ the format for revocation and notice of reinstatement of driving privileges as provided in section 169A.55; and ~~forms~~ the format for temporary licenses.

(b) Rules ~~promulgated~~ adopted pursuant to this section are subject to ~~sections 14.01 to 14.20 and 14.365 to 14.69~~ the procedures in chapter 14 (Administrative Procedure Act).

(c) Additionally, the commissioner may adopt rules indicating the commissioner's approval of instruments for preliminary screening or chemical tests for intoxication under sections 169A.41 and 169A.51 using the procedures specified in section 14.389 (expedited process).

Sec. 5. Minnesota Statutes 2002, section 360.0753, subdivision 4, is amended to read:

Subd. 4. **BREATH TEST USING INFRARED BREATH-TESTING INSTRUMENT.** (a) In the case of a breath test administered using an infrared or other approved breath-testing instrument, as defined in section 169A.03, subdivision 11, the test shall consist of analyses in the following sequence: one adequate breath sample analysis, one ~~calibration standard~~ control analysis, and a second, adequate breath sample analysis.

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

(c) For purposes of this section, when a test is administered using an infrared or other approved 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 2002, section 634.16, is amended to read:

634.16 ADMISSION INTO EVIDENCE OF RESULTS OF ~~INFRARED BREATH TESTS~~ APPROVED BREATH TESTS.

In any civil or criminal hearing or trial, the results of an infrared breath-test a breath test, when performed by a person who has been fully trained in the use of an infrared or other approved breath-testing instrument, as defined in section 169A.03, subdivision 11, pursuant to training given or approved by the commissioner of public safety or the commissioner's acting agent, are admissible in evidence without antecedent expert testimony that an infrared or other approved breath-testing instrument provides a trustworthy and reliable measure of the alcohol in the breath.

New language is indicated by underline, deletions by ~~strikeout~~.

Presented to the governor May 23, 2003

Signed by the governor May 25, 2003, 9:40 p.m.

CHAPTER 97—H.F.No. 671

An act relating to telecommunications; regulating promotions and packages of telephone company services; removing sunset expiration dates for alternative regulation plans for telecommunications providers and highway weight limit exemptions for utility vehicles; amending Minnesota Statutes 2002, section 237.626; Laws 1995, chapter 156, section 25; Laws 2002, chapter 433, section 4.

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

Section 1. Minnesota Statutes 2002, section 237.626, is amended to read:

237.626 PROMOTION ACTIVITIES.

Subdivision 1. PROMOTIONS. A telephone company may promote the use of its services by offering a waiver of part or all of a recurring or a nonrecurring charge, a redemption coupon, or a premium with the purchase of a service. Section 237.09 does not apply to promotions under this section, but the customer group to which the promotion is available must be based on reasonable distinctions among customers. No single promotion may be effective for longer than 90 days at a time. The benefits to a particular customer of a promotion must not extend beyond nine months. The service being promoted must have a price that is above the incremental cost of the service, including amortized cost of the promotion. A promotion may take effect the day after the notice is filed with the commission. The notice must identify customers to whom the promotion is available and include cost information demonstrating that the revenue from the service covers incremental cost, including cost of the promotion. A telephone company that offers a promotion under this section shall file a report on the promotion with the commission and the department within 90 days of the conclusion of the promotion. A telephone company is not required to file cost information except upon request of the department, the office of the attorney general, or the commission to determine if a promotion complies with applicable legal requirements. Within five business days of receipt of a request pursuant to this subdivision, or an order of the commission, the telephone company shall provide the requested cost information demonstrating the service being promoted has a price above the incremental cost of service to the office of the attorney general, the department, and the commission. The telephone company shall file this cost information with the commission soon thereafter.

Subd. 2. BUNDLED SERVICE. (a) A telephone company may offer telecommunications services subject to the regulatory jurisdiction of the commission as part of a package of services that may include goods and services other than those subject to the commission's regulatory jurisdiction. Subject to the requirements of this chapter

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