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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 1876

03/16/2015 Authored by Hertauss, Lesch and Howe

The bill was read for the first time and referred to the Committee on Public Safety and Crime Prevention Policy and Finance

1.1 A bill for an act
1.2 relating to public safety; addressing the applicability of certain affirmative
1.3 defenses in DWI and CVO-related proceedings; clarifying the scope of the
1.4 implied consent hearing; extending certain time periods to request reviews in
1.5 DWI-related proceedings; amending Minnesota Statutes 2014, sections 97B.066,
1.6 subdivisions 8, 9; 169A.46; 169A.53, subdivisions 2, 3; 169A.60, subdivision
1.7 10; 609.2111; repealing Minnesota Statutes 2014, sections 609.2112, subdivision
1.8 2; 609.2113, subdivision 4; 609.2114, subdivision 4.

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

1.10 Section 1. Minnesota Statutes 2014, section 97B.066, subdivision 8, is amended to read:

1.11 Subd. 8. **Judicial review.** (a) Within ~~30~~ 60 days following receipt of a notice and
1.12 order imposing sanctions under this section, a person may petition the court for review.
1.13 The petition must be filed with the district court administrator in the county where the
1.14 incident occurred giving rise to the test demand and refusal, together with proof of service
1.15 of a copy on the commissioner and the prosecuting authority for misdemeanor offenses
1.16 for the jurisdiction in which the incident occurred. A responsive pleading is not required
1.17 of the commissioner of natural resources, and court fees may not be charged for the
1.18 appearance of the representative of the commissioner in the matter.

1.19 (b) The petition must be captioned in the name of the person making the petition as
1.20 petitioner and the commissioner as respondent. The petition must state specifically the
1.21 grounds upon which the petitioner seeks rescission of the order imposing sanctions.

1.22 (c) The filing of the petition does not stay the revocation or prohibition against
1.23 hunting. However, the filing of a petition stays imposition of the civil penalty. The judicial
1.24 review shall be conducted according to the Rules of Civil Procedure.

1.25 **EFFECTIVE DATE.** This section is effective the day following final enactment.

2.1 Sec. 2. Minnesota Statutes 2014, section 97B.066, subdivision 9, is amended to read:

2.2 Subd. 9. **Hearing.** (a) A hearing under this section must be before a district court
2.3 judge in the county where the incident occurred which gave rise to the test demand and
2.4 refusal. The hearing must be to the court and may be conducted at the same time as
2.5 hearings upon pretrial motions in the criminal prosecution under section 97B.065. The
2.6 hearing must be recorded. The commissioner must be represented by the prosecuting
2.7 authority for misdemeanor offenses for the jurisdiction in which the incident occurred
2.8 which gave rise to the test demand and refusal.

2.9 (b) The hearing must be held at the earliest practicable date and in any event no later
2.10 than 60 days following the filing of the petition for review. The reviewing court may order
2.11 a temporary stay of the balance of the prohibition or revocation if the hearing has not been
2.12 conducted within 60 days after filing of the petition, upon the application of the petitioner
2.13 and upon terms the court deems proper.

2.14 (c) The scope of the hearing must be limited to the issues of:

2.15 (1) whether the officer had probable cause to believe that the person violated section
2.16 97B.065;

2.17 (2) whether one of the conditions in subdivision 1 existed;

2.18 (3) whether the person was informed as prescribed in subdivision 3; and

2.19 (4) whether the person refused to submit to testing.

2.20 (d) It is an affirmative defense for the petitioner to prove ~~that, at the time of the~~
2.21 ~~refusal, the petitioner's refusal to permit the test was based upon reasonable grounds~~ any
2.22 of the defenses described in section 169A.46.

2.23 (e) The court shall order that the prohibition or revocation be either sustained or
2.24 rescinded and shall either sustain or rescind the civil penalty. The court shall forward
2.25 a copy of the order to the commissioner.

2.26 **EFFECTIVE DATE.** This section is effective the day following final enactment.

2.27 Sec. 3. Minnesota Statutes 2014, section 169A.46, is amended to read:

2.28 **169A.46 AFFIRMATIVE DEFENSES.**

2.29 Subdivision 1. ~~Impairment occurred~~ **Consumption after driving ceased.** (a) If
2.30 proven by a preponderance of the evidence, it is an affirmative defense to a violation of
2.31 section 169A.20, subdivision 1, clause (5) or (6); 1a, clause (5); 1b, clause (5); or 1c,
2.32 clause (5) (driving while impaired, alcohol concentration within two hours of driving),
2.33 or 169A.20 by a person having an alcohol concentration of 0.20 or more as measured at
2.34 the time, or within two hours of the time, of the offense, that the defendant consumed a

sufficient quantity of alcohol after the time of the violation and before the administration of the evidentiary test to cause the defendant's alcohol concentration to exceed the level specified in the applicable clause. ~~Evidence that the defendant consumed alcohol after the time of the violation may not be admitted in defense to any alleged violation of section 169A.20, unless notice is given to the prosecution prior to the omnibus or pretrial hearing in the matter.~~

(b) If proven by a preponderance of the evidence, it is an affirmative defense to a violation of section 169A.20, subdivision 1, clauses (1) to (4); 1a, clauses (1) to (4); 1b, clauses (1) to (4); or 1c, clauses (1) to (4), that the defendant consumed a sufficient quantity of alcohol, controlled substance, or hazardous substance, or a combination of those elements, after the time of the violation to cause the defendant to be under the influence.

Subd. 2. **Impairment from Prescription drug.** If proven by a preponderance of the evidence, it is an affirmative defense to a violation of section 169A.20 subdivision 1, clause (7) (presence of Schedule I or II controlled substance); 1a, clause (6); 1b, clause (6); or 1c, clause (6), that the defendant used the controlled substance according to the terms of a prescription issued for the defendant in accordance with sections 152.11 and 152.12.

Subd. 3. **Reasonable grounds to refuse test.** If proven by a preponderance of the evidence, it is an affirmative defense to a violation of section 169A.20, subdivision 2 (driving while impaired, test refusal offense), that the defendant's refusal to permit the test was based upon reasonable grounds.

Subd. 4. **Necessity.** If proven by a preponderance of the evidence, it is an affirmative defense to a violation of section 169A.20 (driving while impaired) that the defendant's conduct was a result of necessity.

Subd. 5. **Notice required.** An affirmative defense described in this section may not be raised unless notice is given to the prosecution prior to the omnibus or pretrial hearing in the matter.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 4. Minnesota Statutes 2014, section 169A.53, subdivision 2, is amended to read:

Subd. 2. **Petition for judicial review.** (a) Within ~~30~~ 60 days following receipt of a notice and order of revocation or disqualification pursuant to section 169A.52 (revocation of license for test failure or refusal), a person may petition the court for review. The petition must be filed with the district court administrator in the county where the alleged offense occurred, together with proof of service of a copy on the commissioner, and accompanied by the standard filing fee for civil actions. Responsive pleading is not

required of the commissioner, and court fees must not be charged for the appearance of the commissioner in the matter.

(b) The petition must:

(1) be captioned in the full name of the person making the petition as petitioner and the commissioner as respondent;

(2) include the petitioner's date of birth, driver's license number, and date of the offense; and

(3) state with specificity the grounds upon which the petitioner seeks rescission of the order of revocation, disqualification, or denial.

(c) The filing of the petition does not stay the revocation, disqualification, or denial. The reviewing court may order a stay of the balance of the revocation or disqualification if the hearing has not been conducted within 60 days after filing of the petition upon terms the court deems proper.

(d) Judicial reviews must be conducted according to the Rules of Civil Procedure, except that prehearing discovery is mandatory and is limited to:

(1) the notice of revocation;

(2) the test record or, in the case of blood or urine tests, the certificate of analysis;

(3) the peace officer's certificate and any accompanying documentation submitted by the arresting officer to the commissioner; and

(4) disclosure of potential witnesses, including experts, and the basis of their testimony.

Other types of discovery are available only upon order of the court.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 5. Minnesota Statutes 2014, section 169A.53, subdivision 3, is amended to read:

Subd. 3. **Judicial hearing; issues, order, appeal.** (a) A judicial review hearing under this section must be before a district judge in any county in the judicial district where the alleged offense occurred. The hearing is to the court and may be conducted at the same time and in the same manner as hearings upon pretrial motions in the criminal prosecution under section 169A.20 (driving while impaired), if any. The hearing must be recorded. The commissioner shall appear and be represented by the attorney general or through the prosecuting authority for the jurisdiction involved. The hearing must be held at the earliest practicable date, and in any event no later than 60 days following the filing of the petition for review. The judicial district administrator shall establish procedures to ensure efficient compliance with this subdivision. To accomplish this, the administrator

may, whenever possible, consolidate and transfer review hearings among the locations within the judicial district where terms of district court are held.

(b) In addition to any constitutional challenges, the scope of the hearing is limited to the issues in clauses (1) to ~~(10)~~ (11):

(1) Did the peace officer have probable cause to believe the person was driving, operating, or in physical control of a motor vehicle or commercial motor vehicle in violation of section 169A.20 (driving while impaired)?

(2) Was the person, in fact, driving, operating, or in physical control of a motor vehicle or commercial motor vehicle in violation of section 169A.20?

~~(2)~~ (3) Was the person lawfully placed under arrest for violation of section 169A.20?

~~(3)~~ (4) Was the person involved in a motor vehicle accident or collision resulting in property damage, personal injury, or death?

~~(4)~~ (5) Did the person refuse to take a screening test provided for by section 169A.41 (preliminary screening test)?

~~(5)~~ (6) If the screening test was administered, did the test indicate an alcohol concentration of 0.08 or more?

~~(6)~~ (7) At the time of the request for the test, did the peace officer inform the person of the person's rights and the consequences of taking or refusing the test as required by section 169A.51, subdivision 2?

~~(7)~~ (8) Did the person refuse to permit the test?

~~(8)~~ (9) If a test was taken by a person driving, operating, or in physical control of a motor vehicle, did the test results indicate at the time of testing:

(i) an alcohol concentration of 0.08 or more; or

(ii) the presence of a controlled substance listed in Schedule I or II or its metabolite, other than marijuana or tetrahydrocannabinols?

~~(9)~~ (10) If a test was taken by a person driving, operating, or in physical control of a commercial motor vehicle, did the test results indicate an alcohol concentration of 0.04 or more at the time of testing?

~~(10)~~ (11) Was the testing method used valid and reliable and were the test results accurately evaluated?

(c) It is an affirmative defense for the petitioner to prove ~~that, at the time of the refusal, the petitioner's refusal to permit the test was based upon reasonable grounds~~ any of the defenses described in section 169A.46.

(d) Certified or otherwise authenticated copies of laboratory or medical personnel reports, records, documents, licenses, and certificates are admissible as substantive evidence.

(e) The court shall order that the revocation or disqualification be either rescinded or sustained and forward the order to the commissioner. The court shall file its order within 14 days following the hearing. If the revocation or disqualification is sustained, the court shall also forward the person's driver's license or permit to the commissioner for further action by the commissioner if the license or permit is not already in the commissioner's possession.

(f) Any party aggrieved by the decision of the reviewing court may appeal the decision as provided in the Rules of Appellate Procedure.

(g) The civil hearing under this section shall not give rise to an estoppel on any issues arising from the same set of circumstances in any criminal prosecution.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 6. Minnesota Statutes 2014, section 169A.60, subdivision 10, is amended to read:

Subd. 10. **Petition for judicial review.** (a) Within ~~30~~ 60 days following receipt of a notice and order of impoundment under this section, a person may petition the court for review. The petition must include proof of service of a copy of the petition on the commissioner. The petition must include the petitioner's date of birth, driver's license number, and date of the plate impoundment violation, as well as the name of the violator and the law enforcement agency that issued the plate impoundment order. The petition must state with specificity the grounds upon which the petitioner seeks rescission of the order for impoundment. The petition may be combined with any petition filed under section 169A.53 (administrative and judicial review of license revocation).

(b) Except as otherwise provided in this section, the judicial review and hearing are governed by section 169A.53 and must take place at the same time as any judicial review of the person's license revocation under section 169A.53. The filing of the petition does not stay the impoundment order. The reviewing court may order a stay of the balance of the impoundment period if the hearing has not been conducted within 60 days after filing of the petition upon terms the court deems proper. The court shall order either that the impoundment be rescinded or sustained, and forward the order to the commissioner. The court shall file its order within 14 days following the hearing.

(c) In addition to the issues described in section 169A.53, subdivision 3 (judicial review of license revocation), the scope of a hearing under this subdivision is limited to:

(1) if the impoundment is based on a plate impoundment violation described in subdivision 1, paragraph (d), clause (3) or (4), whether the peace officer had probable cause to believe the violator committed the plate impoundment violation and whether the evidence demonstrates that the plate impoundment violation occurred; and

(2) for all other cases, whether the peace officer had probable cause to believe the violator committed the plate impoundment violation.

(d) In a hearing under this subdivision, the following records are admissible in evidence:

(1) certified copies of the violator's driving record; and

(2) certified copies of vehicle registration records bearing the violator's name.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 7. Minnesota Statutes 2014, section 609.2111, is amended to read:

609.2111 DEFINITIONS; AFFIRMATIVE DEFENSES.

Subdivision 1. Definitions. (a) For purposes of sections 609.2111 to 609.2114, the terms defined in this subdivision have the meanings given them.

(b) "Motor vehicle" has the meaning given in section 609.52, subdivision 1, and includes attached trailers.

(c) "Controlled substance" has the meaning given in section 152.01, subdivision 4.

(d) "Hazardous substance" means any chemical or chemical compound that is listed as a hazardous substance in rules adopted under chapter 182.

Subd. 2. Affirmative defenses. (a) If proven by a preponderance of the evidence, it is an affirmative defense to a violation of section 609.2112, subdivision 1, clause (3) or (4); section 609.2113, subdivision 1, clause (3) or (4); subdivision 2, clause (3) or (4); or subdivision 3, clause (3) or (4); or section 609.2114, subdivision 1, clause (3) or (4); or subdivision 2, clause (3) or (4), that the defendant consumed a sufficient quantity of alcohol after the time of the violation and before the administration of the evidentiary test to cause the defendant's alcohol concentration to exceed the level specified in the applicable clause.

(b) If proven by a preponderance of the evidence, it is an affirmative defense to a violation of section 609.2112, subdivision 1, clause (2) or (5); section 609.2113, subdivision 1, clause (2) or (5); subdivision 2, clause (2) or (5); or subdivision 3, clause (2) or (5); or section 609.2114, subdivision 1, clause (2) or (5); or subdivision 2, clause (2) or (5), that the defendant consumed a sufficient quantity of alcohol, controlled substance, or hazardous substance, or a combination of those elements, after the time of the violation to cause the defendant to be under the influence.

(c) If proven by a preponderance of the evidence, it is an affirmative defense to a violation of section 609.2112, subdivision 1, clause (6); section 609.2113, subdivision 1, clause (6); subdivision 2, clause (6); or subdivision 3, clause (6); or section 609.2114, subdivision 1, clause (6); or subdivision 2, clause (6), that the defendant used the

8.1 controlled substance according to the terms of a prescription issued for the defendant in
8.2 accordance with sections 152.11 and 152.12.

8.3 (d) If proven by a preponderance of the evidence, it is an affirmative defense to a
8.4 violation of section 609.2112, 609.2113, or 609.2114 that the defendant's conduct was a
8.5 result of necessity.

8.6 (e) An affirmative defense described in this subdivision may not be raised unless
8.7 notice is given to the prosecution prior to the omnibus or pretrial hearing in the matter.

8.8 **EFFECTIVE DATE.** This section is effective the day following final enactment.

8.9 Sec. 8. **LIMITATION; CONSTRUCTION.**

8.10 The application of this bill is limited to driving while impaired and criminal
8.11 vehicular operation-related proceedings. A court may not construe the amendments made
8.12 in this bill as addressing or limiting the applicability of affirmative defenses in other
8.13 criminal or civil proceedings.

8.14 **EFFECTIVE DATE.** This section is effective the day following final enactment.

8.15 Sec. 9. **REPEALER.**

8.16 Minnesota Statutes 2014, sections 609.2112, subdivision 2; 609.2113, subdivision 4;
8.17 and 609.2114, subdivision 4, are repealed.

8.18 **EFFECTIVE DATE.** This section is effective the day following final enactment.

APPENDIX
Repealed Minnesota Statutes: 15-2113

609.2112 CRIMINAL VEHICULAR HOMICIDE.

Subd. 2. **Affirmative defense.** It shall be an affirmative defense to a charge under subdivision 1, clause (6), that the defendant used the controlled substance according to the terms of a prescription issued for the defendant in accordance with sections 152.11 and 152.12.

609.2113 CRIMINAL VEHICULAR OPERATION; BODILY HARM.

Subd. 4. **Affirmative defense.** It shall be an affirmative defense to a charge under subdivisions 1, clause (6); 2, clause (6); and 3, clause (6), that the defendant used the controlled substance according to the terms of a prescription issued for the defendant in accordance with sections 152.11 and 152.12.

609.2114 CRIMINAL VEHICULAR OPERATION; UNBORN CHILD.

Subd. 4. **Affirmative defense.** It shall be an affirmative defense to a charge under subdivisions 1, clause (6), and 2, clause (6), that the defendant used the controlled substance according to the terms of a prescription issued for the defendant in accordance with sections 152.11 and 152.12.