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State of Minnesota
HOUSE OF REPRESENTATIVES
NINETIETH SESSION

H. F. No. **2364**

03/13/2017 Authored by Cornish
The bill was read for the first time and referred to the Committee on Public Safety and Security Policy and Finance

1.1 A bill for an act
1.2 relating to public safety; requiring a warrant to obtain blood or urine samples;
1.3 providing for license revocation; establishing guidelines for license revocation
1.4 hearings; amending Minnesota Statutes 2016, sections 169A.03, subdivision 21;
1.5 169A.20, subdivision 2; 169A.51, subdivisions 2, 4; proposing coding for new
1.6 law in Minnesota Statutes, chapter 171; repealing Minnesota Statutes 2016, section
1.7 169A.51, subdivision 3.

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

1.9 Section 1. Minnesota Statutes 2016, section 169A.03, subdivision 21, is amended to read:

1.10 Subd. 21. **Prior impaired driving-related loss of license.** (a) "Prior impaired
1.11 driving-related loss of license" includes a driver's license suspension, revocation, cancellation,
1.12 denial, or disqualification under:

1.13 (1) section 169A.31 (alcohol-related school bus or Head Start bus driving); 169A.50 to
1.14 169A.53 (implied consent law); 169A.54 (impaired driving convictions and adjudications;
1.15 administrative penalties); 171.04 (persons not eligible for drivers' licenses); 171.14
1.16 (cancellation); 171.16 (court may recommend suspension); 171.165 (commercial driver's
1.17 license, disqualification); 171.17 (revocation); 171.177 (revocation; pursuant to search
1.18 warrant); or 171.18 (suspension); because of an alcohol-related incident;

1.19 (2) Minnesota Statutes 2012, section 609.21 (criminal vehicular homicide and injury,
1.20 substance-related offenses), subdivision 1, clauses (2) to (6);

1.21 (3) Minnesota Statutes 1998, section 169.121 (driver under influence of alcohol or
1.22 controlled substance); 169.1211 (alcohol-related driving by commercial vehicle drivers);
1.23 or 169.123 (chemical tests for intoxication);

2.1 (4) Minnesota Statutes 2006, section 609.21 (criminal vehicular homicide and injury,
 2.2 substance-related offenses), subdivision 1, clauses (2) to (6); subdivision 2, clauses (2) to
 2.3 (6); subdivision 2a, clauses (2) to (6); subdivision 2b, clauses (2) to (6); subdivision 3,
 2.4 clauses (2) to (6); or subdivision 4, clauses (2) to (6);

2.5 (5) section 609.2112, subdivision 1, clauses (2) to (6); 609.2113, subdivision 1, clauses
 2.6 (2) to (6), subdivision 2, clauses (2) to (6), or subdivision 3, clauses (2) to (6); or 609.2114,
 2.7 subdivision 1, clauses (2) to (6), or subdivision 2, clauses (2) to (6); or

2.8 (6) an ordinance from this state, or a statute or ordinance from another state, in conformity
 2.9 with any provision listed in clause (1), (2), (3), (4), or (5).

2.10 (b) "Prior impaired driving-related loss of license" also includes the revocation of
 2.11 snowmobile or all-terrain vehicle operating privileges under section 84.911 (chemical
 2.12 testing), or motorboat operating privileges under section 86B.335 (testing for alcohol and
 2.13 controlled substances), for violations that occurred on or after August 1, 1994; the revocation
 2.14 of snowmobile or all-terrain vehicle operating privileges under section 84.91 (operation of
 2.15 snowmobiles and all-terrain vehicles by persons under the influence of alcohol or controlled
 2.16 substances); or the revocation of motorboat operating privileges under section 86B.331
 2.17 (operation while using alcohol or drugs or with a physical or mental disability).

2.18 (c) "Prior impaired driving-related loss of license" does not include any license action
 2.19 stemming solely from a violation of section 169A.33 (underage drinking and driving),
 2.20 171.09 (conditions of a restricted license), or 340A.503 (persons under the age of 21, illegal
 2.21 acts).

2.22 Sec. 2. Minnesota Statutes 2016, section 169A.20, subdivision 2, is amended to read:

2.23 Subd. 2. **Refusal to submit to chemical test crime.** It is a crime for any person to refuse
 2.24 to submit to a chemical test:

2.25 (1) of the person's blood, breath, or urine under section 169A.51 (chemical tests for
 2.26 intoxication), or 169A.52 (test refusal or failure; revocation of license); or

2.27 (2) of the person's blood or urine as required by a search warrant under sections 626.04
 2.28 to 626.18.

2.29 Sec. 3. Minnesota Statutes 2016, section 169A.51, subdivision 2, is amended to read:

2.30 Subd. 2. ~~Implied consent~~ **Breath test advisory.** ~~(a) Subject to paragraph (b),~~ At the
 2.31 time a breath test is requested, the person must be informed:

3.1 (1) that Minnesota law requires the person to take a test:

3.2 (i) to determine if the person is under the influence of alcohol, ~~controlled substances, or~~
3.3 ~~hazardous substances; and~~

3.4 (ii) ~~to determine the presence of a controlled substance listed in Schedule I or II or~~
3.5 ~~metabolite, other than marijuana or tetrahydrocannabinols; and~~

3.6 (iii) if the motor vehicle was a commercial motor vehicle, to determine the presence of
3.7 alcohol;

3.8 (2) that refusal to ~~take~~ submit to a breath test is a crime; and

3.9 (3) ~~if the peace officer has probable cause to believe the person has violated the criminal~~
3.10 ~~vehicular homicide and injury laws, that a test will be taken with or without the person's~~
3.11 ~~consent; and~~

3.12 (4) that the person has the right to consult with an attorney, but that this right is limited
3.13 to the extent that it cannot unreasonably delay administration of the test.

3.14 (b) ~~A peace officer who is not pursuing an implied consent revocation is not required~~
3.15 ~~to give the advisory described in paragraph (a) to a person whom the officer has probable~~
3.16 ~~cause to believe has violated section 609.2112, subdivision 1, clause (2), (3), (4), (5), or~~
3.17 ~~(6); 609.2113, subdivision 1, clause (2), (3), (4), (5), or (6); or 609.2114, subdivision 1,~~
3.18 ~~clause (2), (3), (4), (5), or (6); or Minnesota Statutes 2012, 609.21, subdivision 1, clause~~
3.19 ~~(2), (3), (4), (5), or (6) (criminal vehicular operation DWI-related provisions).~~

3.20 Sec. 4. Minnesota Statutes 2016, section 169A.51, subdivision 4, is amended to read:

3.21 Subd. 4. **Requirement of urine or blood test.** ~~Notwithstanding subdivision 3,~~ A blood
3.22 or urine test may be required pursuant to a search warrant under sections 626.04 to 626.18
3.23 even after a breath test has been administered if there is probable cause to believe that:

3.24 (1) there is impairment by a controlled substance or a hazardous substance that is not
3.25 subject to testing by a breath test; ~~or~~

3.26 (2) a controlled substance listed in Schedule I or II or its metabolite, other than marijuana
3.27 or tetrahydrocannabinols, is present in the person's body; or

3.28 (3) the person is unconscious or incapacitated to the point that the peace officer providing
3.29 a breath test advisory, administering a breath test, or serving the search warrant has a
3.30 good-faith belief that the person is mentally or physically unable to comprehend the breath
3.31 test advisory or otherwise voluntarily submit to chemical tests.

4.1 ~~Action may be taken against a person who refuses to take a blood test under this~~
4.2 ~~subdivision only if a urine test was offered and action may be taken against a person who~~
4.3 ~~refuses to take a urine test only if a blood test was offered.~~

4.4 Sec. 5. [171.177] REVOCATION; PURSUANT TO SEARCH WARRANT.

4.5 Subdivision 1. License revocation pursuant to search warrant. After executing a
4.6 search warrant under sections 626.04 to 626.18 for the collection of a blood or urine sample
4.7 based upon probable cause of a violation of chapter 169A, the peace officer acting under
4.8 sections 626.13 to 626.17 shall certify to the commissioner of public safety:

4.9 (1) when a person refuses to comply with the execution of the search warrant; or

4.10 (2) if a person submits to the test and the test results indicate:

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

4.12 (ii) an alcohol concentration of 0.04 or more, if the person was driving, operating, or in
4.13 physical control of a commercial motor vehicle at the time of the violation; or

4.14 (iii) the presence of a controlled substance listed in Schedule I or II or its metabolite,
4.15 other than marijuana or tetrahydrocannabinols.

4.16 Subd. 2. Test refusal; license revocation. (a) Upon certification under subdivision 1
4.17 that there existed probable cause to believe the person had been driving, operating, or in
4.18 physical control of a motor vehicle in violation of section 169A.20 (driving while impaired),
4.19 and that the person refused to comply with the execution of the search warrant under sections
4.20 626.04 to 626.18, the commissioner shall revoke the person's license or permit to drive or
4.21 nonresident operating privilege. The commissioner shall revoke the license, permit, or
4.22 nonresident operating privilege:

4.23 (1) for a person with no qualified prior impaired driving incidents within the past ten
4.24 years, for a period of not less than one year;

4.25 (2) for a person under the age of 21 years and with no qualified prior impaired driving
4.26 incidents within the past ten years, for a period of not less than one year;

4.27 (3) for a person with one qualified prior impaired driving incident within the past ten
4.28 years or two qualified prior impaired driving incidents, for a period of not less than two
4.29 years;

4.30 (4) for a person with two qualified prior impaired driving incidents within the past ten
4.31 years or three qualified prior impaired driving incidents, for a period of not less than three
4.32 years;

5.1 (5) for a person with three qualified prior impaired driving incidents within the past ten
5.2 years, for a period of not less than four years; or

5.3 (6) for a person with four or more qualified prior impaired driving incidents, for a period
5.4 of not less than six years.

5.5 (b) When a person refuses to comply with the search warrant and permit testing, the
5.6 commissioner shall disqualify the person from operating a commercial motor vehicle and
5.7 shall revoke the person's license or permit to drive or nonresident operating privilege
5.8 according to the federal regulations adopted by reference in section 171.165, subdivision
5.9 2.

5.10 Subd. 3. **Test failure; license revocation.** (a) Upon certification under subdivision 1,
5.11 pursuant to a search warrant under sections 626.04 to 626.18, that there existed probable
5.12 cause to believe the person had been driving, operating, or in physical control of a motor
5.13 vehicle in violation of section 169A.20 (driving while impaired), and that the person
5.14 submitted to a test and the test results indicate an alcohol concentration of 0.08 or more or
5.15 the presence of a controlled substance listed in Schedule I or II or its metabolite, other than
5.16 marijuana or tetrahydrocannabinols, the commissioner shall revoke the person's license or
5.17 permit to drive or nonresident operating privilege:

5.18 (1) for a period of 90 days, or, if the test results indicate an alcohol concentration of
5.19 twice the legal limit or more, not less than one year;

5.20 (2) if the person is under the age of 21 years, for a period of not less than 180 days or,
5.21 if the test results indicate an alcohol concentration of twice the legal limit or more, not less
5.22 than one year;

5.23 (3) for a person with one qualified prior impaired driving incident within the past ten
5.24 years or two qualified prior impaired driving incidents, for a period of not less than one
5.25 year, or if the test results indicate an alcohol concentration of twice the legal limit or more,
5.26 not less than two years;

5.27 (4) for a person with two qualified prior impaired driving incidents within the past ten
5.28 years or three qualified prior impaired driving incidents, for a period of not less than three
5.29 years;

5.30 (5) for a person with three qualified prior impaired driving incidents within the past ten
5.31 years, for a period of not less than four years; or

5.32 (6) for a person with four or more qualified prior impaired driving incidents, for a period
5.33 of not less than six years.

6.1 (b) On certification by the peace officer that there existed probable cause to believe the
6.2 person had been driving, operating, or in physical control of a commercial motor vehicle
6.3 with any presence of alcohol and that the person submitted to a test and the test results
6.4 indicated an alcohol concentration of 0.04 or more, the commissioner shall disqualify the
6.5 person from operating a commercial motor vehicle under section 171.165 (commercial
6.6 driver's license disqualification).

6.7 (c) If the test is of a person's blood or urine by a laboratory operated by the Bureau of
6.8 Criminal Apprehension or authorized by the bureau to conduct the analysis of a blood or
6.9 urine sample, the laboratory may directly certify to the commissioner the test results, and
6.10 the peace officer shall certify to the commissioner that there existed probable cause to
6.11 believe the person had been driving, operating, or in physical control of a motor vehicle in
6.12 violation of section 169A.20 (driving while impaired), and that the person submitted to a
6.13 test. Upon receipt of both certifications, the commissioner shall undertake the license actions
6.14 described in paragraphs (a) and (b).

6.15 Subd. 4. **Unlicensed drivers; license issuance denial.** If the person is a resident without
6.16 a license or permit to operate a motor vehicle in this state, the commissioner shall deny to
6.17 the person the issuance of a license or permit after the date of the alleged violation for the
6.18 same period as provided in this section for revocation, subject to review as provided in
6.19 subdivisions 8 and 9.

6.20 Subd. 5. **Notice of revocation or disqualification; review.** A revocation under this
6.21 section, or a disqualification under section 171.165 (commercial driver's license
6.22 disqualification), becomes effective at the time the commissioner or a peace officer acting
6.23 on behalf of the commissioner notifies the person of the intention to revoke, disqualify, or
6.24 both, and of revocation or disqualification. The notice must advise the person of the right
6.25 to obtain administrative and judicial review as provided in subdivisions 8 and 9. If mailed,
6.26 the notice and order of revocation or disqualification is deemed received three days after
6.27 mailing to the last known address of the person.

6.28 Subd. 6. **Test refusal; driving privilege lost.** (a) On behalf of the commissioner, a peace
6.29 officer requiring a test or directing the administration of a chemical test pursuant to a search
6.30 warrant under sections 626.04 to 626.18 shall serve immediate notice of intention to revoke
6.31 and of revocation on a person who refuses to permit a test or on a person who submits to a
6.32 test the results of which indicate an alcohol concentration of 0.08 or more.

6.33 (b) On behalf of the commissioner, a peace officer requiring a test or directing the
6.34 administration of a chemical test of a person driving, operating, or in physical control of a

7.1 commercial motor vehicle pursuant to a search warrant under sections 626.04 to 626.18
7.2 shall serve immediate notice of intention to disqualify and of disqualification on a person
7.3 who refuses to permit a test or on a person who submits to a test the results of which indicate
7.4 an alcohol concentration of 0.04 or more.

7.5 (c) The officer shall:

7.6 (1) invalidate the person's driver's license or permit card by clipping the upper corner
7.7 of the card in such a way that no identifying information including the photo is destroyed,
7.8 and immediately return the card to the person;

7.9 (2) issue the person a temporary license effective for only seven days; and

7.10 (3) send the notification of this action to the commissioner along with the certificate
7.11 required by subdivision 3 or 4.

7.12 Subd. 7. **Notice of action to other states.** When a nonresident's privilege to operate a
7.13 motor vehicle in this state has been revoked or denied, the commissioner shall give
7.14 information in writing of the action taken to the official in charge of traffic control or public
7.15 safety of the state of the person's residence and of any state in which the person has a license.

7.16 Subd. 8. **Administrative review.** (a) At any time during a period of revocation imposed
7.17 under this section, or a period of disqualification imposed under section 171.165 (commercial
7.18 driver's license disqualification), a person may request in writing a review of the order of
7.19 revocation or disqualification by the commissioner, unless the person is entitled to review
7.20 under section 171.166 (review of disqualification). Upon receiving a request, the
7.21 commissioner or the commissioner's designee shall review the order, the evidence upon
7.22 which the order was based, and any other material information brought to the attention of
7.23 the commissioner and determine whether sufficient cause exists to sustain the order. Within
7.24 15 days of receiving the request, the commissioner shall report in writing the results of the
7.25 review. The review provided in this subdivision is not subject to the contested case provisions
7.26 of the Administrative Procedure Act in sections 14.001 to 14.69.

7.27 (b) The availability of administrative review for an order of revocation or disqualification
7.28 has no effect upon the availability of judicial review under this section.

7.29 (c) Review under this subdivision must take place, if possible, at the same time as any
7.30 administrative review of the person's impoundment order under section 169A.60, subdivision
7.31 9.

7.32 Subd. 9. **Petition for judicial review.** (a) Within 60 days following receipt of a notice
7.33 and order of revocation pursuant to this section, a person may petition the court for review.

8.1 The petition must be filed with the district court administrator in the county where the
8.2 alleged offense occurred, together with proof of service of a copy on the commissioner, and
8.3 accompanied by the standard filing fee for civil actions. Responsive pleading is not required
8.4 of the commissioner, and court fees must not be charged for the appearance of the
8.5 commissioner in the matter.

8.6 (b) The petition must:

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

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

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

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

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

8.19 (1) the notice of revocation;

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

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

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

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

8.25 Subd. 10. **Judicial hearing; issues, order, appeal.** (a) A judicial review hearing under
8.26 this section must be before a district judge in any county in the judicial district where the
8.27 alleged offense occurred. The hearing is to the court and may be conducted at the same time
8.28 and in the same manner as hearings upon pretrial motions in the criminal prosecution under
8.29 section 169A.20 (driving while impaired), if any. The hearing must be recorded. The
8.30 commissioner shall appear and be represented by the attorney general or through the
8.31 prosecuting authority for the jurisdiction involved. The hearing must be held at the earliest
8.32 practicable date, and in any event no later than 60 days following the filing of the petition

9.1 for review. The judicial district administrator shall establish procedures to ensure efficient
9.2 compliance with this subdivision. To accomplish this, the administrator may, whenever
9.3 possible, consolidate and transfer review hearings among the locations within the judicial
9.4 district where terms of district court are held.

9.5 (b) The scope of the hearing is limited to the issues in clauses (1) to (10):

9.6 (1) Did the peace officer have probable cause to believe the person was driving, operating,
9.7 or in physical control of a motor vehicle or commercial motor vehicle in violation of section
9.8 169A.20 (driving while impaired)?

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

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

9.12 (4) Did a licensed peace officer apply for a search warrant in accordance with the
9.13 requirements set forth in sections 626.04 to 626.18?

9.14 (5) Did a neutral magistrate review the application for a search warrant and determine
9.15 there was probable cause to believe that the person was driving, operating, or in physical
9.16 control of a motor vehicle or commercial motor vehicle in violation of section 169A.20
9.17 (driving while impaired)?

9.18 (6) Did the person refuse to permit the test?

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

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

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

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

9.27 (9) Was the testing method used valid and reliable and were the test results accurately
9.28 evaluated?

9.29 (10) Did the person prove the defense of necessity?

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

10.1 (d) The court shall order that the revocation or disqualification be either rescinded or
10.2 sustained and forward the order to the commissioner. The court shall file its order within
10.3 14 days following the hearing. If the revocation or disqualification is sustained, the court
10.4 shall also forward the person's driver's license or permit to the commissioner for further
10.5 action by the commissioner if the license or permit is not already in the commissioner's
10.6 possession.

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

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

10.11 (g) It is an affirmative defense for the petitioner to prove a necessity.

10.12 Sec. 6. **REPEALER.**

10.13 Minnesota Statutes 2016, section 169A.51, subdivision 3, is repealed.

169A.51 CHEMICAL TESTS FOR INTOXICATION.

Subd. 3. **Type of test.** The peace officer who requires a test pursuant to this section may direct whether the test is of blood, breath, or urine. Action may be taken against a person who refuses to take a blood test only if an alternative test was offered and action may be taken against a person who refuses to take a urine test only if an alternative test was offered.