

SENATE

STATE OF MINNESOTA

EIGHTY-NINTH SESSION

S.F. No. 3327

(SENATE AUTHORS: LATZ and Dibble)

| DATE       | D-PG  | OFFICIAL STATUS  |
|------------|-------|--|
| 03/30/2016 | 5375  | Introduction and first reading<br>Referred to Judiciary                          |
| 04/06/2016 | 5696a | Comm report: To pass as amended and re-refer to Transportation and Public Safety |
| 04/07/2016 | 5734  | Chief author stricken, shown as co-author Dibble<br>Chief author added Latz      |
| 04/11/2016 |       | Comm report: To pass as amended and re-refer to Finance                          |

A bill for an act

relating to impaired driving; requiring ignition interlock for repeat offenders to reinstate driving privileges; extending certain time periods to request reviews in DWI-related proceedings; providing that DWI offenders are not required to take a specified examination as a condition of driver's license reinstatement; prohibiting the application of the DWI Forfeiture Law to motor vehicles operated by persons who enter the ignition interlock program; modifying the DWI forfeiture laws innocent owner defense; amending Minnesota Statutes 2014, sections 97B.066, subdivision 8; 169A.53, subdivision 2; 169A.55, subdivisions 2, 4; 169A.60, subdivision 10; 169A.63, subdivision 7, by adding a subdivision; 171.29, subdivision 1; Minnesota Statutes 2015 Supplement, section 169A.53, subdivision 3.

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

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

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

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

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

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

Sec. 2. 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. 3. Minnesota Statutes 2015 Supplement, 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) The scope of the hearing is limited to the issues in clauses (1) to (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 lawfully placed under arrest for violation of section 169A.20?

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

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

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

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

(8) 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, unless the person proves the controlled substance was used according to the terms of a prescription issued for that person according to sections 152.11 and 152.12?

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

(11) Did the person prove the defense of necessity?

(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.

(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.

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

Sec. 4. Minnesota Statutes 2014, section 169A.55, subdivision 2, is amended to read:

Subd. 2. **Reinstatement of driving privileges; notice.** Upon expiration of a period of revocation under section 169A.52 (license revocation for test failure or refusal) or 169A.54 (impaired driving convictions and adjudications; administrative penalties), the commissioner shall notify the person of the terms upon which driving privileges can be reinstated, and new registration plates issued, which terms are: (1) ~~successful completion of an examination and~~ proof of compliance with any terms of alcohol treatment or counseling previously prescribed, if any; and (2) any other requirements imposed by the commissioner and applicable to that particular case. The commissioner shall notify the owner of a motor vehicle subject to an impoundment order under section 169A.60 (administrative impoundment of plates) as a result of the violation of the procedures for obtaining new registration plates, if the owner is not the violator. The commissioner shall also notify the person that if driving is resumed without reinstatement of driving

privileges or without valid registration plates and registration certificate, the person will be subject to criminal penalties.

Sec. 5. Minnesota Statutes 2014, section 169A.55, subdivision 4, is amended to read:

Subd. 4. **Reinstatement of driving privileges; multiple incidents.** (a) A person whose driver's license has been revoked as a result of an offense listed under clause (1) or (2) shall not be eligible for reinstatement of driving privileges without an ignition interlock restriction until the commissioner certifies the person's use of the ignition interlock device and compliance with section 171.306 for a period of not less than:

(1) one year, for a person whose driver's license was revoked for:

(i) an offense occurring within ten years of a qualified prior impaired driving incident; or

(ii) an offense occurring after two qualified prior impaired driving incidents; or

(2) two years, for a person whose driver's license was revoked for:

(i) an offense occurring under clause (1), and where the test results indicated an alcohol concentration of twice the legal limit; or

(ii) an offense occurring under clause (1), and where the current offense is for a violation of section 169A.20, subdivision 2 (test refusal).

(b) A person whose driver's license has been canceled or denied as a result of three or more qualified impaired driving incidents shall not be eligible for reinstatement of driving privileges without an ignition interlock restriction until the person:

(1) has completed rehabilitation according to rules adopted by the commissioner or been granted a variance from the rules by the commissioner; and

(2) has submitted verification of abstinence from alcohol and controlled substances under paragraph (c), as evidenced by the person's use of an ignition interlock device or other chemical monitoring device approved by the commissioner.

~~(b)~~ (c) The verification of abstinence must show that the person has abstained from the use of alcohol and controlled substances for a period of not less than:

(1) three years, for a person whose driver's license was canceled or denied for an offense occurring within ten years of the first of two qualified prior impaired driving incidents, or occurring after three qualified prior impaired driving incidents;

(2) four years, for a person whose driver's license was canceled or denied for an offense occurring within ten years of the first of three qualified prior impaired driving incidents; or

(3) six years, for a person whose driver's license was canceled or denied for an offense occurring after four or more qualified prior impaired driving incidents.

(e) (d) The commissioner shall establish performance standards and a process for certifying chemical monitoring devices. The standards and procedures are not rules and are exempt from chapter 14, including section 14.386.

**EFFECTIVE DATE.** This section is effective August 1, 2016, and applies to offenses committed on or after that date.

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.

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

7.2 Sec. 7. Minnesota Statutes 2014, section 169A.63, subdivision 7, is amended to read:

7.3 Subd. 7. **Limitations on vehicle forfeiture.** (a) A vehicle is presumed subject to  
7.4 forfeiture under this section if:

7.5 (1) the driver is convicted of the designated offense upon which the forfeiture is based;

7.6 (2) the driver fails to appear for a scheduled court appearance with respect to the  
7.7 designated offense charged and fails to voluntarily surrender within 48 hours after the  
7.8 time required for appearance; or

7.9 (3) the driver's conduct results in a designated license revocation and the driver  
7.10 fails to seek judicial review of the revocation in a timely manner as required by section  
7.11 169A.53, subdivision 2, (petition for judicial review), or the license revocation is judicially  
7.12 reviewed and sustained under section 169A.53, subdivision 2.

7.13 (b) A vehicle encumbered by a security interest perfected according to section  
7.14 168A.17, subdivision 2, or subject to a lease that has a term of 180 days or more, is subject  
7.15 to the interest of the secured party or lessor unless the party or lessor had knowledge of or  
7.16 consented to the act upon which the forfeiture is based. However, when the proceeds of the  
7.17 sale of a seized vehicle do not equal or exceed the outstanding loan balance, the appropriate  
7.18 agency shall remit all proceeds of the sale to the secured party after deducting the agency's  
7.19 costs for the seizure, tow, storage, forfeiture, and sale of the vehicle. If the sale of the  
7.20 vehicle is conducted in a commercially reasonable manner consistent with the provisions  
7.21 of section 336.9-610, the agency is not liable to the secured party for any amount owed on  
7.22 the loan in excess of the sale proceeds. The validity and amount of a nonperfected security  
7.23 interest must be established by its holder by clear and convincing evidence.

7.24 (c) Notwithstanding paragraph (b), the secured party's or lessor's interest in a vehicle  
7.25 is not subject to forfeiture based solely on the secured party's or lessor's knowledge of  
7.26 the act or omission upon which the forfeiture is based if the secured party or lessor  
7.27 demonstrates by clear and convincing evidence that the party or lessor took reasonable  
7.28 steps to terminate use of the vehicle by the offender.

7.29 (d) A motor vehicle is not subject to forfeiture under this section if any of its  
7.30 ~~owner~~ owners can demonstrate by clear and convincing evidence that the owner did not  
7.31 have actual or constructive knowledge that the vehicle would be used or operated in  
7.32 any manner contrary to law or that the owner took reasonable steps to prevent use of  
7.33 the vehicle by the offender. If the offender is a family or household member of any of  
7.34 ~~the owner~~ owners petitioning the court and has three or more prior impaired driving  
7.35 convictions, ~~the~~ any owner is presumed to know of any vehicle use by the offender that is

contrary to law. "Vehicle use contrary to law" includes, but is not limited to, violations of the following statutes:

- (1) section 171.24 (violations; driving without valid license);
- (2) section 169.791 (criminal penalty for failure to produce proof of insurance);
- (3) section 171.09 (driving restrictions; authority, violations);
- (4) section 169A.20 (driving while impaired);
- (5) section 169A.33 (underage drinking and driving); and
- (6) section 169A.35 (open bottle law).

**EFFECTIVE DATE.** This section is effective August 1, 2016, and applies to forfeiture actions occurring on or after that date.

Sec. 8. Minnesota Statutes 2014, section 169A.63, is amended by adding a subdivision to read:

Subd. 13. **Exception.** (a) This section does not apply if the driver who committed the designated offense or whose conduct resulted in the designated license revocation becomes a program participant in the ignition interlock program under section 171.306 within 60 days following service of the Notice of Seizure and Intent to Forfeit under this section.

(b) Notwithstanding paragraph (a), if the program participant described in paragraph (a) subsequently operates the motor vehicle to commit a designated offense or in a manner that results in a designated license revocation, the vehicle must be seized and summarily forfeited.

(c) Paragraph (b) applies only if the described subsequent vehicle operation occurs before the participant has been restored to full driving privileges or within three years of the original designated offense or designated license revocation, whichever occurs latest.

Sec. 9. Minnesota Statutes 2014, section 171.29, subdivision 1, is amended to read:

Subdivision 1. **Examination required.** (a) No person whose driver's license has been revoked by reason of conviction, plea of guilty, or forfeiture of bail not vacated, under section 169.791, 169.797, 171.17, or 171.172, or revoked under section 169.792 or 169A.52 shall be issued another license unless and until that person shall have successfully passed an examination as required by the commissioner of public safety. This subdivision does not apply to an applicant for early reinstatement under section 169.792, subdivision 7a.

(b) The requirement to successfully pass the examination described in paragraph (a) does not apply to a person whose driver's license has been revoked because of an impaired driving offense.