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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 1428

02/08/2023 Authored by Novotny, Hudson, Bennett and Robbins
The bill was read for the first time and referred to the Committee on Transportation Finance and Policy

1.1 A bill for an act
1.2 relating to public safety; making uniform the revocation of driver's licenses of
1.3 impaired drivers; authorizing a pilot project for oral fluid roadside testing for
1.4 drug-impaired driving; amending Minnesota Statutes 2022, sections 169A.51,
1.5 subdivisions 3, 4, by adding a subdivision; 171.177, subdivisions 1, 3, 4, 5, 8, 12,
1.6 14.

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

1.8 Section 1. Minnesota Statutes 2022, section 169A.51, subdivision 3, is amended to read:

1.9 Subd. 3. Blood or urine tests; search warrant required. (a) Notwithstanding any
1.10 contrary provisions in sections 169A.51 to 169A.53, a blood or urine test may be conducted
1.11 only pursuant to a search warrant under sections 626.04 to 626.18, or a judicially recognized
1.12 exception to the search warrant requirement. In addition, blood and urine tests may be
1.13 conducted only as provided in sections 169A.51 to 169A.53 and 171.177.

1.14 (b) When, under the provisions of section 169A.20, 169A.51, or 171.177, a search
1.15 warrant is required for a blood or urine test, that requirement is met if a judicially recognized
1.16 exception to the warrant requirement is applicable.

1.17 Sec. 2. Minnesota Statutes 2022, section 169A.51, subdivision 4, is amended to read:

1.18 Subd. 4. Requirement of urine or blood test. A blood or urine test may be required
1.19 pursuant to a search warrant under sections 626.04 to 626.18 even after a breath test has
1.20 been administered if there is probable cause to believe that:

1.21 (1) there is impairment by a controlled substance or an intoxicating substance that is not
1.22 subject to testing by a breath test;

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

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

2.7 Action may be taken against a person who refuses to take a blood test under this
 2.8 subdivision only if a urine test was offered and action may be taken against a person who
 2.9 refuses to take a urine test only if a blood test was offered. This limitation does not apply
 2.10 to an unconscious person under the circumstances described in clause (3).

2.11 Sec. 3. Minnesota Statutes 2022, section 169A.51, is amended by adding a subdivision to
 2.12 read:

2.13 Subd. 8. **Definition.** As used in this section, a "search warrant" means a judicially
 2.14 approved search warrant obtained pursuant to the requirements in sections 626.04 to 626.18
 2.15 or conforming statutes in an adjacent state.

2.16 Sec. 4. Minnesota Statutes 2022, section 171.177, subdivision 1, is amended to read:

2.17 Subdivision 1. **Search warrant-required testing advisory.** At the time a blood or urine
 2.18 test is directed pursuant to a search warrant ~~under sections 626.04 to 626.18~~, the person
 2.19 must be informed that refusal to submit to a blood or urine test is a crime.

2.20 Sec. 5. Minnesota Statutes 2022, section 171.177, subdivision 3, is amended to read:

2.21 Subd. 3. **License revocation pursuant to search warrant.** After executing a search
 2.22 warrant ~~under sections 626.04 to 626.18~~ for the collection of a blood or urine sample based
 2.23 upon probable cause of a violation of section 169A.20, the peace officer acting under sections
 2.24 626.13 to 626.17 shall certify to the commissioner of public safety:

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

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

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

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

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

3.3 Sec. 6. Minnesota Statutes 2022, section 171.177, subdivision 4, is amended to read:

3.4 Subd. 4. **Test refusal; license revocation.** (a) Upon certification under subdivision 3
3.5 that there existed probable cause to believe the person had been driving, operating, or in
3.6 physical control of a motor vehicle in violation of section 169A.20, and that the person
3.7 refused to comply with the execution of the search warrant ~~under sections 626.04 to 626.18,~~
3.8 the commissioner shall revoke the person's license or permit to drive or nonresident operating
3.9 privilege. The commissioner shall revoke the license, permit, or nonresident operating
3.10 privilege:

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

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

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

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

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

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

3.25 (b) When a person who had been driving, operating, or in physical control of a
3.26 commercial motor vehicle refuses to comply with the search warrant and permit testing,
3.27 the commissioner shall disqualify the person from operating a commercial motor vehicle
3.28 and shall revoke the person's license or permit to drive or nonresident operating privilege
3.29 according to the federal regulations adopted by reference in section 171.165, subdivision
3.30 2.

4.1 Sec. 7. Minnesota Statutes 2022, section 171.177, subdivision 5, is amended to read:

4.2 Subd. 5. **Test failure; license revocation.** (a) Upon certification under subdivision 3,
4.3 pursuant to a search warrant ~~under sections 626.04 to 626.18~~, that there existed probable
4.4 cause to believe the person had been driving, operating, or in physical control of a motor
4.5 vehicle in violation of section 169A.20, and that the person submitted to a test and the test
4.6 results indicate an alcohol concentration of 0.08 or more or the presence of a controlled
4.7 substance listed in Schedule I or II or its metabolite, other than marijuana or
4.8 tetrahydrocannabinols, the commissioner shall revoke the person's license or permit to drive
4.9 or nonresident operating privilege:

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

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

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

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

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

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

4.26 (b) On certification by the peace officer that there existed probable cause to believe the
4.27 person had been driving, operating, or in physical control of a commercial motor vehicle
4.28 with any presence of alcohol and that the person submitted to a test and the test results
4.29 indicated an alcohol concentration of 0.04 or more, the commissioner shall disqualify the
4.30 person from operating a commercial motor vehicle under section 171.165.

4.31 (c) If the test is of a person's blood or urine by a laboratory operated by the Bureau of
4.32 Criminal Apprehension or authorized by the bureau to conduct the analysis of a blood or
4.33 urine sample, the laboratory may directly certify to the commissioner the test results, and

5.1 the peace officer shall certify to the commissioner that there existed probable cause to
5.2 believe the person had been driving, operating, or in physical control of a motor vehicle in
5.3 violation of section 169A.20, and that the person submitted to a test. Upon receipt of both
5.4 certifications, the commissioner shall undertake the license actions described in paragraphs
5.5 (a) and (b).

5.6 Sec. 8. Minnesota Statutes 2022, section 171.177, subdivision 8, is amended to read:

5.7 Subd. 8. **Test refusal; driving privilege lost.** (a) On behalf of the commissioner, a peace
5.8 officer requiring a test or directing the administration of a chemical test pursuant to a search
5.9 warrant ~~under sections 626.04 to 626.18~~ shall serve immediate notice of intention to revoke
5.10 and of revocation on a person who refuses to permit a test or on a person who submits to a
5.11 test, the results of which indicate an alcohol concentration of 0.08 or more.

5.12 (b) On behalf of the commissioner, a peace officer requiring a test or directing the
5.13 administration of a chemical test of a person driving, operating, or in physical control of a
5.14 commercial motor vehicle pursuant to a search warrant ~~under sections 626.04 to 626.18~~
5.15 shall serve immediate notice of intention to disqualify and of disqualification on a person
5.16 who refuses to permit a test or on a person who submits to a test, the results of which indicate
5.17 an alcohol concentration of 0.04 or more.

5.18 (c) The officer shall:

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

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

5.23 (3) send the notification of this action to the commissioner along with the certificate
5.24 required by subdivision 4 or 5.

5.25 Sec. 9. Minnesota Statutes 2022, section 171.177, subdivision 12, is amended to read:

5.26 Subd. 12. **Judicial hearing; issues, order, appeal.** (a) A judicial review hearing under
5.27 this section must be before a district judge in any county in the judicial district where the
5.28 alleged offense occurred. The hearing is to the court and may be conducted at the same time
5.29 and in the same manner as hearings upon pretrial motions in the criminal prosecution under
5.30 section 169A.20, if any. The hearing must be recorded. The commissioner shall appear and
5.31 be represented by the attorney general or through the prosecuting authority for the jurisdiction
5.32 involved. The hearing must be held at the earliest practicable date, and in any event no later

6.1 than 60 days following the filing of the petition for review. The judicial district administrator
6.2 shall establish procedures to ensure efficient compliance with this subdivision. To accomplish
6.3 this, the administrator may, whenever possible, consolidate and transfer review hearings
6.4 among the locations within the judicial district where terms of district court are held.

6.5 (b) The scope of the hearing is limited to the issues in clauses (1) to (13):

6.6 (1) Did the peace officer have probable cause to believe the person was driving, operating,
6.7 or in physical control of a motor vehicle or commercial motor vehicle in violation of section
6.8 169A.20?

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

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

6.12 (4) Did a licensed peace officer apply for a search warrant in accordance with the
6.13 requirements set forth in sections 626.04 to 626.18 or conforming statutes in an adjacent
6.14 state?

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

6.18 (6) Was the search warrant and the process by which it was obtained valid?

6.19 (7) At the time of directing the person to take the test, did the peace officer inform the
6.20 person that refusing the test was a crime as required by subdivision 1?

6.21 (8) Did the person refuse to permit the test?

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

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

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

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

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

7.1 (12) Did the person prove the defense of necessity?

7.2 (13) Did the person prove the defense of controlled substance use in accordance with a
7.3 prescription?

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

7.6 (d) The court shall order that the revocation or disqualification be either rescinded or
7.7 sustained and forward the order to the commissioner. The court shall file its order within
7.8 14 days following the hearing. If the revocation or disqualification is sustained, the court
7.9 shall also forward the person's driver's license or permit to the commissioner for further
7.10 action by the commissioner if the license or permit is not already in the commissioner's
7.11 possession.

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

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

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

7.17 (h) It is an affirmative defense to the presence of a Schedule I or II controlled substance
7.18 that the person used the controlled substance according to the terms of a prescription issued
7.19 for the person according to sections 152.11 and 152.12, unless the court finds by a
7.20 preponderance of the evidence that the use of the controlled substance impaired the person's
7.21 ability to operate a motor vehicle.

7.22 Sec. 10. Minnesota Statutes 2022, section 171.177, subdivision 14, is amended to read:

7.23 Subd. 14. **Definitions.** (a) The definitions in section 169A.03 apply to this section.

7.24 (b) For purposes of this section, a "search warrant" means a judicially approved search
7.25 warrant obtained pursuant to the requirements of sections 626.04 to 626.18 or conforming
7.26 statutes in an adjacent state.

7.27 Sec. 11. **DWI CONTROLLED SUBSTANCE ROADSIDE TESTING INSTRUMENT**
7.28 **PILOT PROJECT; REPORT REQUIRED.**

7.29 (a) The commissioner of public safety shall design, plan, and implement a pilot project
7.30 to study oral fluid roadside testing instruments to determine the presence of a controlled
7.31 substance or intoxicating substance in individuals stopped or arrested for driving while

8.1 impaired offenses. The pilot project shall determine the practicality, accuracy, and efficacy
8.2 of these testing instruments and determine and make recommendations on the best instrument
8.3 or instruments to pursue in the future.

8.4 (b) The pilot project must begin on September 1, 2023, and continue until August 31,
8.5 2024.

8.6 (c) The commissioner shall consult with law enforcement officials, prosecutors, criminal
8.7 defense attorneys, and other interested and knowledgeable parties when designing,
8.8 implementing, and evaluating the pilot project.

8.9 (d) All oral fluid samples obtained for the purpose of this pilot project shall be obtained
8.10 by a certified drug recognition evaluator and may only be collected with the express voluntary
8.11 consent of the person stopped or arrested for suspicion of driving while impaired. Results
8.12 of tests conducted under the pilot project are to be used for the purpose of analyzing the
8.13 practicality, accuracy, and efficacy of the instrument. Results may not be used to decide
8.14 whether an arrest should be made and are not admissible in any legal proceeding.

8.15 (e) By February 1, 2025, the commissioner shall report to the chairs and ranking minority
8.16 members of the legislative committees with jurisdiction over public safety on the results of
8.17 the pilot project. At a minimum, the report must include information on how accurate the
8.18 instruments were when tested against laboratory results, how often participants were found
8.19 to have controlled substances or intoxicating substances in their systems, how often there
8.20 was commingling of controlled substances or intoxicating substances with alcohol, the types
8.21 of controlled substances or intoxicating substances found in participants' systems and which
8.22 types were most common, and the number of participants in the project. In addition, the
8.23 report must assess the practicality and reliability of using the instruments in the field and
8.24 make recommendations on continuing the project permanently.

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