

State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 291

01/22/2015 Authored by Cornish and Pinto

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; providing a necessity defense in implied consent  
1.3 proceedings; amending Minnesota Statutes 2014, section 169A.53, subdivision 3.

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

1.5 Section 1. Minnesota Statutes 2014, section 169A.53, subdivision 3, is amended to read:

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

1.18 (b) The scope of the hearing is limited to the issues in clauses (1) to ~~(10)~~ (11):

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

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

1.23 (3) Was the person involved in a motor vehicle accident or collision resulting in  
1.24 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?

(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 based on a threat to physical safety.